

In the United States
Circuit Court of Appeals
 For the Ninth Circuit. 6

L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUEFREE, ED. KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY,

Appellants,

ERNEST F. GANAHL,

Appellant,

vs.

ANAHEIM FIRST NATIONAL BANK, a National Banking Association and J. V. HOGAN, Receiver, Intervenor,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

FILED

OCT 20 1938

PAUL P. O'BRIEN,

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellants:

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Los Angeles, California.

UNITED STATES OF AMERICA, ss.

TO ANAHEIM FIRST NATIONAL BANK, a National Banking Association, JOHN DOE COMPANY, a corporation, JOHN DOE ONE, JOHN DOE TWO, and JOHN DOE THREE, J. V. HOGAN, Receiver, Intervenor, Greeting:

You are hereby cited and admonished to be and appear at a United States *Circuit of Appeals* for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 24th day of August, A. D. 1938, pursuant to Order Allowing Appeal filed on July 25, 1938 in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 7522-J (in Law) WHEREIN L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER, M. E. DAY are Appellants, and you are appellees to show cause, if any there be, why the Decree, Order or Judgment in the said Appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. P. JAMES United States District Judge for the Southern District of Cali-

fornia, this 26 day of July, A. D. 1938, and of the Independence of the United States, the one hundred and Sixty-*Second*.

Wm P. James

U. S. District Judge for the Southern District of California.

Service of a copy of the foregoing Citation is Acknowledged this 4th day of August, 1938.

Dockweiler & Dockweiler
& Benjamin Chipkin

by Henry I. Dockweiler

Attorneys for Appellee Anaheim First
National Bank.

[Endorsed]: Filed Aug. 4, 1938. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE
COUNTY OF ORANGE

L. J. KELLY; F. H. DOLAN;)		
BEN BAXTER; S. JAMES)		
TUFFREE; ED KELLY; F. A.)		
YUNGBLUTH; MINNIE PAL-)		
MER, formerly known as Minnie)		
Baxter; M. DEL GIORGIO;)		
JENNIE POMEROY; J. W.)		
TRUXAW; J. J. DWYER; M.)		
E. DAY; ERNEST F. GAN-)		
AHL; FRANK BAUM and)		COMPLAINT
JOSEPHINE BAUM, husband)		FOR MONEY
and wife,)		AND TO
Plaintiffs,)		CANCEL
		WRITTEN
vs.)		INSTRUMENTS
)
ANAHEIM FIRST NATIONAL)		
BANK, a national banking asso-)		
ciation; JOHN DOE COM-)		
PANY, a corporation; JOHN)		
DOE ONE; JOHN DOE TWO;)		
and JOHN DOE THREE,)		
Defendants.)		

Plaintiffs complain of defendants and for cause of action allege:

I

That F. K. Day is dead and that prior to the commencement of this action the plaintiff, M. E. Day, succeeded to all of the right, title and interest of the said

F. K. Day in and to his claim herein sued upon, and that the said plaintiff, M. E. Day, is now the owner and holder thereof.

II

That at all times herein mentioned the plaintiffs, Frank Baum and Josephine Baum, have been and now are husband and wife; that the plaintiff, Minnie Palmer, was formerly known as Minnie Baxter.

III

That the defendant, Anaheim First National Bank, is a national banking association organized under the statutes of the United States known as the National Banking Act; that the said Bank has its place of business in Anaheim, Orange County, State of California; that the said Bank was declared insolvent by the Comptroller of the Currency of the United States of America on the 15th day of January, 1934 and that on that date the said Comptroller of the Currency appointed J. V. Hogan as Receiver of the said Bank, and that ever since the said time the said J. V. Hogan has been and now is acting in the performance of his duties as Receiver of the said Bank.

IV

That on or about June 18, 1931, a depreciation existed in the bond account of the said defendant, Anaheim First National Bank; that at said time the aforesaid F. K. Day and all of the plaintiffs herein, except the plaintiffs, M. E. Day and Josephine Baum, were shareholders in the said Bank; that on or about the said June 18, 1931 the said F. K. Day and all of the plaintiffs herein, except the plaintiffs, M. E. Day and Josephine Baum, together with other shareholders of said Bank, entered into an

agreement with the said Bank whereby the said other shareholders of the said Bank and the said F. K. Day and all of the said plaintiffs herein, except the said plaintiffs, M. E. Day and Josephine Baum, agreed to purchase from the said Bank the said depreciation then existing in the said bond account; that by the terms of the said agreement the said Bank agreed to pay, from time to time to the aforesaid parties who so entered into the aforesaid agreement with the said Bank any prorata decrease which might from time to time appear in the said depreciation of the said bond account of the said Bank.

V

That in said agreement the said plaintiff, L. J. Kelly, agreed to pay to the said Bank the sum of \$4,900.00 and that pursuant to the said agreement said plaintiff, L. J. Kelly, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, L. J. Kelly, by the said Bank.

VI

That on or about January 15, 1934 the said J. V. Hogan, as Receiver of the said Bank, as aforesaid, took possession of all of the assets of the said Bank, including the said bond account, and liquidated the same.

VII

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, L. J. Kelly, to the said Bank of the said sum of \$4,900.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank has become

and is now indebted to the said plaintiff, L. J. Kelly, in the said sum of \$4,900.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

VIII

That on or about May 31, 1934 the said Comptroller of the Currency published his notice requiring all persons having claims against the said Bank to present their said claims to the said J. V. Hogan, as Receiver, as aforesaid, with the legal proof thereof within three months from the said May 31, 1934.

IX

That on or about August 23, 1934 said plaintiff, L. J. Kelly, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$4,900.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, L. J. Kelly, and that the said plaintiff, L. J. Kelly, is now the owner and holder thereof.

FOR A SECOND COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, F. H. Dolan, agreed to pay to the said Bank the sum of \$32,500.00 and that pursuant to the said agreement said plaintiff, F. H. Dolan, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, F. H. Dolan, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, F. H. Dolan, to the said Bank of the said sum of \$32,500.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank has become and is now indebted to the said plaintiff, F. H. Dolan, in the said sum of \$32,500.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, F. H. Dolan, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$32,500.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, F. H. Dolan, and that the said plaintiff, F. H. Dolan, is now the owner and holder thereof.

FOR A THIRD COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Ben Baxter, agreed to pay to the said Bank the sum of \$1,750.00 and that pursuant to the said agreement said plaintiff, Ben Baxter, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, Ben Baxter, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, Ben Baxter, to the said Bank of the said sum of \$1,750.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank has become and is now indebted to the said plaintiff, Ben Baxter, in the said sum of \$1,750.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, Ben Baxter, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$1,750.00 plus interest, together with legal proof of his

said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, Ben Baxter, and that the said plaintiff, Ben Baxter, is now the owner and holder thereof.

FOR A FOURTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, S. James Tuffree, agreed to pay to the said Bank the sum of \$3,500.00 and that pursuant to the said agreement said plaintiff, S. James Tuffree, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, S. James Tuffree, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, S. James Tuffree, to the said Bank of the said sum of \$3,500.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank has become and is now indebted to the said plaintiff, S. James Tuffree, in the said sum of \$3,500.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, S. James Tuffree, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$3,500.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, S. James Tuffree, and that the said plaintiff, S. James Tuffree, is now the owner and holder thereof.

FOR A FIFTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Ed Kelly, agreed to pay to the said Bank the sum of \$9,000.00 and that pursuant to the said agreement said plaintiff, Ed Kelly, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, Ed Kelly, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, Ed Kelly, to the said Bank of the said sum of \$9,000.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank has become and

is now indebted to the said plaintiff, Ed Kelly, in the said sum of \$9,000.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, Ed Kelly, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$9,000.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, Ed Kelly, and that the said plaintiff, Ed Kelly, is now the owner and holder thereof.

FOR A SIXTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, F. A. Yungbluth, agreed to pay to the said Bank the sum of \$1,750.00 and that pursuant to the said agreement said plaintiff, F. A. Yungbluth, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, F. A. Yungbluth, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, F. A. Yungbluth, to the

said Bank of the said sum of \$1,750.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, F. A. Yungbluth, in the said sum of \$1,750.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, F. A. Yungbluth, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$1,750.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, F. A. Yungbluth, and that the said plaintiff, F. A. Yungbluth, is now the owner and holder thereof.

FOR A SEVENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, agreed to pay to the said Bank the sum of \$3,850.00 and that pursuant to the said agreement said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, on or about July 17, 1931,

paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, to the said Bank of the said sum of \$3,850.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, in the said sum of \$3,850.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, her claim for the said sum of \$3,850.00, plus interest, together with legal proof of her said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, and that the said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, is now the owner and holder thereof.

FOR AN EIGHTH COUNT PLAINTIFFS AL-
LEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, M. Del Giorgio, agreed to pay to the said Bank the sum of \$875.00 and that pursuant to the said agreement said plaintiff, M. Del Giorgio, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, M. Del Giorgio, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, M. Del Giorgio, to the said Bank of the said sum of \$875.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, M. Del Giorgio, in the said sum of \$875.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, M. Del Giorgio, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$875.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no

part of the said claim has been paid to the said plaintiff, M. Del Giorgio, and that the said plaintiff, M. Del Giorgio, is now the owner and holder thereof.

FOR A NINTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Jennie Pomeroy, agreed to pay to the said Bank the sum of \$3,500.00 and that pursuant to the said agreement said plaintiff, Jennie Pomeroy, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, Jennie Pomeroy, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, Jennie Pomeroy, to the said bank of the said sum of \$3,500.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, Jennie Pomeroy, in the said sum of \$3,500.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, Jennie Pomeroy, duly presented to the said J. V. Hogan, as

Receiver, as aforesaid, his claim for the said sum of \$3,500.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, Jennie Pomeroy, and that the said plaintiff, Jennie Pomeroy, is now the owner and holder thereof.

FOR A TENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, J. W. Truxaw, agreed to pay to the said Bank the sum of \$1,750.00 and that pursuant to the said agreement said plaintiff, J. W. Truxaw, on or about July 17, 1931, paid the said sum to the said bank; that no part of the said sum has been repaid to the said plaintiff, J. W. Truxaw, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, J. W. Truxaw, to the said Bank of the said sum of \$1,750.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, J. W. Truxaw, in the said sum of \$1,750.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, J. W. Truxaw, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$1,750.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, J. W. Truxaw, and that the said plaintiff, J. W. Truxaw, is now the owner and holder thereof.

FOR AN ELEVENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, J. J. Dwyer, agreed to pay to the said Bank the sum of \$1,750.00 and that pursuant to the said agreement said plaintiff, J. J. Dwyer, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said plaintiff, J. J. Dwyer, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, J. J. Dwyer, to the said Bank of the said sum of \$1,750.00 wholly failed, and that by reason of the matters and things herein set forth

said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, J. J. Dwyer, in the said sum of \$1,750.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934, said plaintiff, J. J. Dwyer, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, his claim for the said sum of \$1,750.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, J. J. Dwyer, and that the said plaintiff, J. J. Dwyer, is now the owner and holder thereof.

FOR A TWELFTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said F. K. Day agreed to pay to the said Bank the sum of \$875.00 and that pursuant to the said agreement the said F. K. Day, on or about July 17, 1931, paid the said sum to the said Bank; that no part of the said sum has been repaid to the said F. K. Day, or to the plaintiff, M. E. Day, by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, includ-

ing the said bond account, the consideration for the said payment by the said F. K. Day, to the said Bank of the said sum of \$875.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, M. E. Day, in the said sum of \$875.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That on or about August 23, 1934 said plaintiff, M. E. Day, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, her claim for the said sum of \$875.00, plus interest, together with legal proof of her said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, M. E. Day, and that the said plaintiff, M. E. Day, is now the owner and holder thereof.

FOR A THIRTEENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Ernest F. Ganahl, agreed to pay to the said Bank the sum of \$1,750.00 and that pursuant to the said agreement the said Ernest F. Ganahl, on or about July 7, 1931, executed his promissory note to the said Bank in the said sum of \$1,750.00; that subsequent to the execution of the said promissory note

by the said Ernest F. Ganahl the said Ernest F. Ganahl paid on the principal sum of the said note the sum of \$550.89 and paid interest on the said promissory note in the sum of \$150.31; that the said promissory note was duly delivered to the said Bank, and that the said Bank is now the owner and holder of said note and money so delivered and executed and no part of which has been repaid by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiff, Ernest F. Ganahl, to the said Bank of the said sum of \$1,750.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiff, Ernest F. Ganahl, in the said sum of \$1,750.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That thereafter and within the time limited by law the said plaintiff, Ernest F. Ganahl, duly presented to the said J. V. Hogan, as receiver, as aforesaid, his claim for the said sum of \$1,750.00, plus interest, together with legal proof of his said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the said claim has been paid to the said plaintiff, Ernest F. Ganahl, and that the said plaintiff, Ernest F. Ganahl, is now the owner and holder thereof.

FOR A FOURTEENTH COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, IV, VI and VIII of their first count as part of this count to the same extent as if herein set forth in full.

II

That in said agreement said plaintiff, Frank Baum, agreed to pay to the said Bank the sum of \$5,250.00 and that pursuant to the said agreement the said plaintiff, Frank Baum, executed his promissory note to the said Bank, dated December 19, 1932, in the sum of \$5,250.00; that subsequent to the execution of the said promissory note the said plaintiff, Frank Baum, paid the sum of \$352.74 interest on the said promissory note; that subsequent to the execution of the said promissory note by the said Frank Baum the said Bank demanded from said Frank Baum security for said promissory note and the said Frank Baum and the plaintiff, Josephine Baum, his wife, on or about May 9, 1933, executed and delivered to said Bank a certain trust deed which said trust deed was duly recorded on May 22, 1933 at page 8, volume 618, Official Records, Orange County, California, on the following described real property:

All that property located in the City of Anaheim, County of Orange, described as follows, to-wit:

PARCEL 1: Lot Twenty-seven (27) in Block "A" of Tract No. 247, Monte Vista Tract," as per map thereof recorded in Book 13, page 51 of Miscellaneous Maps, Records of said Orange County.

PARCEL 2: Lot Twelve (12) in Block "C" of Davis Bros. Addition to Anaheim, as per map thereof recorded

in Book 2, pages 632 and 633 of Miscellaneous Records of Los Angeles County, California

Excepting therefrom the Westerly 10 feet thereof for widening Palm Street.

PARCEL 3: That portion of Vineyard Lot "E-6", as per map thereof recorded in Book 4, pages 629 and 630 of Deeds, Records of Los Angeles County, California, described as follows: Beginning at a point in the Southerly line of said Lot "E-6" which is 255 feet Easterly from the Southwest corner thereof, said point being also the Southeasterly corner of that certain parcel of land conveyed by Frank Baum et ux to H. H. Armbrust et ux by deed dated November 4th, 1931, and recorded January 14th, 1932, in Book 528, page 320 of Official Records of Orange County, California; thence Northerly on a line parallel with the Westerly line of said Lot "E-6" and also along the Easterly line of the land so conveyed to Armbrust to the Southerly line of a strip of land conveyed to the City of Anaheim for alley purposes by deed recorded May 23rd, 1924, in Book 524, page 297 of Deeds, Records of said Orange County; thence Easterly along the Southerly line of said alley a distance of 57.42 feet to an intersection with a line drawn parallel with and 311 feet Easterly from the Westerly line of said Lot "E-6"; thence Southerly along a line parallel with and distant 311 feet Easterly from the Westerly line of said Lot "E-6" a distance of 199.96 feet, more or less, to the Southerly corner of said Lot "E-6"; thence Westerly along the Southerly line of said Lot "E-6" 56 feet to the point of beginning.

Excepting therefrom that portion thereof on the South included within the lines of Broadway.

Reserving therefrom a right of way for a ditch or pipe line through said Tract for carrying water for irrigation purposes.

Above Parcels 1, 2 and 3 are subject to restrictions, reservations and conditions of record, also to second half of 1932-33 City, County and State taxes, also to 1933-34 City, County and State Taxes.

That said note and trust deed, aforesaid, were duly delivered to said Bank, and that said Bank is now the owner and holder of said note, trust deed and money so delivered and executed and no part of which has been repaid by the said Bank.

III

That by reason of the appointment of said Receiver and the liquidation of the assets of the said Bank, including the said bond account, the consideration for the said payment by the said plaintiffs, Frank Baum and Josephine Baum, to the said Bank of the said sum of \$5,250.00 wholly failed, and that by reason of the matters and things herein set forth said defendant, Anaheim First National Bank, has become and is now indebted to the said plaintiffs, Frank Baum and Josephine Baum, in the said sum of \$5,250.00, plus interest thereon at the rate of 7% per annum from January 15, 1934.

IV

That thereafter and within the time limited by law the said plaintiffs, Frank Baum and Josephine Baum, duly presented to the said J. V. Hogan, as Receiver, as aforesaid, their claim for the said sum of \$5,250.00, plus interest, together with legal proof of their said claim, all in the manner and form as required by the said Comptroller of the Currency, as aforesaid; that no part of the

said claim has been paid to the said plaintiffs, Frank Baum and Josephine Baum, and that the said plaintiffs, Frank Baum and Josephine Baum, are now the owners and holders thereof.

FOR A FIFTEENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII and IX of their first count as part of this count to the same extent as if herein set forth in full.

II

That within two years last past the plaintiff, L. J. Kelly, loaned to the defendant, Anaheim First National Bank, the sum of \$4,900.00, and said Bank thereupon received the said sum for the use and benefit of said plaintiff, L. J. Kelly, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, L. J. Kelly, although said plaintiff, L. J. Kelly, has on numerous occasions made demand on said Bank for payment thereof.

FOR A SIXTEENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII of their first count and Paragraph IV of their second count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, F. H. Dolan, loaned to the defendant, Anaheim First National Bank, the sum of \$32,500.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, F. H. Dolan, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, F. H. Dolan, although said plaintiff, F. H. Dolan, has on numerous occasions made demand on said Bank for payment thereof.

FOR A SEVENTEENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII of their first count and Paragraph IV of their third count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, Ben Baxter, loaned to the defendant, Anaheim First National Bank, the sum of \$1,750.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, Ben Baxter, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, Ben Baxter, although said plaintiff, Ben Baxter, has on numerous occasions made demand on said Bank for payment thereof.

FOR AN EIGHTEENTH COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII of their first count and Paragraph IV of their fourth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, S. James Tuffree, loaned to the defendant, Anaheim First National Bank, the sum of \$3,500.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, S. James Tuffree, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, S. James Tuffree, although said plaintiff, S. James Tuffree, has on numerous occasions made demand on said Bank for payment thereof.

FOR A NINETEENTH COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their fifth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, Ed Kelly, loaned to the defendant, Anaheim First National Bank, the sum of \$9,000.00, and said Bank thereupon received said sum for the use and benefit

of said plaintiff, Ed Kelly, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, Ed Kelly, although said plaintiff, Ed Kelly, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTIETH COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII of their first count and Paragraph IV of their sixth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, F. A. Yungbluth, loaned to the defendant, Anaheim First National Bank, the sum of \$1,750.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, F. A. Yungbluth, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, F. A. Yungbluth, although said plaintiff, F. A. Yungbluth, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-FIRST COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, VIII of their first count and Paragraph IV of their seventh count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, Minnie Palmer, formerly known as Minnie Baxter, loaned to the defendant, Anaheim First National Bank, the sum of \$3,850.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, although said plaintiff, Minnie Palmer, formerly known as Minnie Baxter, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-SECOND COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III, and VIII of their first count and Paragraph IV of their eighth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, M. Del Giorgio, loaned to the defendant, Anaheim First National Bank, the sum of \$875.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, M. Del Giorgio, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, M. Del Giorgio, although said plaintiff, M. Del Giorgio, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-THIRD COUNT PLAINTIFFS
ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their ninth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, Jennie Pomeroy, loaned to the defendant, Anaheim First National Bank, the sum of \$3,500.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, Jennie Pomeroy, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, Jennie Pomeroy, although said plaintiff, Jennie Pomeroy, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-FOURTH COUNT PLAIN-
TIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their tenth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, J. W. Truxaw, loaned to the defendant, Anaheim First National Bank, the sum of \$1,750.00, and said Bank thereupon received said sum for the use and

benefit of said plaintiff, J. W. Truxaw, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, J. W. Truxaw, although said plaintiff, J. W. Truzaw, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-FIFTH COUNT PLAINTIFFS ALLEGE:

I

Plaitniffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their eleventh count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the plaintiff, J. J. Dwyer, loaned to the defendant, Anaheim First National Bank, the sum of \$1,750.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, J. J. Dwyer, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, J. J. Dwyer, although said plaintiff, J. J. Dwyer, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-SIXTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their twelfth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count, the said F. K. Day loaned to the defendant, Anaheim First National Bank, the sum of \$875.00, and said Bank thereupon received said sum for the use and benefit of said F. K. Day, and promised to repay the same on demand, but no part of said sum has been repaid to said F. K. Day or to the plaintiff, M. E. Day, although said plaintiff, M. E. Day, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-SEVENTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their thirteenth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count the plaintiff, Ernest F. Ganahl, loaned to the defendant, Anaheim First National Bank, the sum of \$1,750.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, Ernest F. Ganahl, and promised to repay the same on demand but no part of said sum has been repaid to said plaintiff, Ernest F. Ganahl, although said plaintiff, Ernest F. Ganahl, has on numerous occasions made demand on said Bank for payment thereof.

FOR A TWENTY-EIGHTH COUNT PLAINTIFFS ALLEGE:

I

Plaintiffs hereby incorporate Paragraphs I, II, III and VIII of their first count and Paragraph IV of their fourteenth count to the same extent as if herein set forth in full.

II

That within two years last past and as a part of the transaction set forth in plaintiffs' fifteenth count the plaintiff, Frank Baum, loaned to the defendant, Anaheim First National Bank, the sum of \$5,250.00, and said Bank thereupon received said sum for the use and benefit of said plaintiff, Frank Baum, and promised to repay the same on demand, but no part of said sum has been repaid to said plaintiff, Frank Baum, although said plaintiff, Frank Baum, has on numerous occasions made demand on said Bank for payment thereof.

WHEREFORE, plaintiffs, and each of them, pray judgment against the said defendant, Anaheim First National Bank, a national banking association, as follows:

1. (a) For plaintiff, L. J. Kelly, the sum of \$4,900.00.
- (b) For plaintiff, F. H. Dolan, the sum of \$32,500.00.
- (c) For plaintiff, Ben Baxter, the sum of \$1,750.00.
- (d) For plaintiff, S. James Tuffree, the sum of \$3,500.00.
- (e) For plaintiff, Ed Kelly, the sum of \$9,000.00.
- (f) For plaintiff, F. A. Yungbluth, the sum of \$1,750.00.
- (g) For plaintiff, Minnie Palmer, formerly known as Minnie Baxter, the sum of \$3,850.00.

- (h) For plaintiff, M. Del Giorgio, the sum of \$875.00.
 - (i) For Plaintiff, Jennie Pomeroy, the sum of \$3,500.00.
 - (j) For plaintiff, J. W. Truxaw, the sum of \$1,750.00.
 - (k) For plaintiff, J. J. Dwyer, the sum of \$1,750.00.
 - (l) For plaintiff, M. E. Day, the sum of \$875.00.
 - (m) For plaintiff, Ernest F. Ganahl, the sum of \$1,750.00.
 - (n) For plaintiffs, Frank Baum and Josephine Baum, the sum of \$5,250.00.
2. For interest on each and all of the aforesaid amounts at the rate of 7% per annum from January 15, 1934.
 3. That the defendant, Anaheim First National Bank, redeliver and cancel all notes and trust deed received from plaintiffs heretofore alleged to have been given to said defendant Bank and that the lien created by any such instruments on any of the property heretofore enumerated be cancelled and that said defendant Bank cause to be recorded a satisfaction of any liens heretofore given by plaintiffs upon the matters herein litigated.
 4. For plaintiffs' costs of suit and for such other and further relief as to the Court may seem meet and proper.

SPARLING & TEEL

WM. J. M. HEINZ and

BENNO M. BRINK

By Wm J M Heinz,

Attorneys for plaintiffs

[TITLE OF SUPERIOR COURT AND CAUSE.]

NO. 33866

PETITION FOR REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA, CENTRAL
DIVISION.

Comes now the defendant, Anaheim First National Bank, a national banking association by and thru J. V. Hogan, Receiver of the said Anaheim First National Bank, a national banking association, and acting for and on behalf of the Anaheim First National Bank, a national banking association, by this its petition herein shows the court and alleges:

I

That defendant herein appears specially for removing this suit to the United States District Court, Southern District of California, Central Division, and for no other purpose.

II

That at all times hereinafter mentioned, and that at all times mentioned and described in the complaint herein the defendant, Anaheim First National Bank, of Anaheim, California, was and now is a national banking association, duly organized and existing under the laws of the United States of America, with its principal place of business in the City of Anaheim, County of Orange, State of California, and is for the purpose of this petition a citizen and resident of the Central Division of the Southern District of California. That on the 15th day of January, 1934, the said bank having become insolvent, its property and affairs were taken into the custody, control and posses-

sion by the Comptroller of the Currency of the United States pursuant to the laws of the United States, and J. V. Hogan was on the said 15th day of January, 1934, duly appointed and commissioned by the said Comptroller of the Currency of the United States as the Receiver of the said Anaheim First National Bank of Anaheim, California, and said J. V. Hogan, did qualify as such, and ever since has been and now is the duly qualified and acting receiver of the said Anaheim First National Bank, of Anaheim, California. That the affairs of the said Anaheim First National Bank of Anaheim, California, *is* being wound up by J. V. Hogan as receiver of the said Anaheim First National Bank of Anaheim, California, under and pursuant to the laws of the United States, and more particularly that portion of the laws of the United States commonly known as the National Banking Act of the United States and Acts of Congress amendatory thereof.

III

That the action herein is a civil action, arising under the Constitution and the Laws of the United States; the same involving the sum of \$73,000.00 with interest thereon at the rate of seven per cent per annum from January 15th, 1934, and as appears from the complaint herein the purpose of said action is to compel the petitioner and J. V. Hogan, as its receiver, to allow the alleged claims of the plaintiffs set forth in this complaint as a legal claim and to obtain its payment or such sums as has already been paid as dividends. That the nature of said action is such that it concerns and interferes with the winding up of the affairs of the said Anaheim First National Bank, of Anaheim California, and affects the

assets and funds in the hands of the petitioner and J. V. Hogan, as receiver of the said bank, and that the proper construction of the laws of the United States is involved in said action. That Judicial Code, Section 24, Sub. 16 (U. S. C. A. Title 28, Sect. 41 Sub. 16) provides that the Federal Court has original jurisdiction for cases for the winding up of the affairs of a national banking association, and Judicial Code, Section 28 and 29 (U. S. C. A. Title 28, Sect. 71-72) provide for the removal of such cases to the Federal Court where originally brought in a State court.

IV

That your petitioner desires to remove this suit before the trial thereof and before the time to plead to the District Court of the United States, Southern District of California, Central Division; that the summons and complaint herein were served upon your petitioner on or about January 11th, 1936, and the time for answering or pleading to the complaint will not expire as to petitioner until the 15th day of February, 1936, and this petition therefore is made and filed before the time that these defendants are required by the law of the State of California to answer or plead to said complaint.

V

That petitioner hereby offers and files herein a bond duly made and executed with good and sufficient security for entering into the District Court of the United States, Southern District of California, Central Division, within

thirty days from the filing of this petition, a certified copy of the record in this suit and for paying all costs that may be awarded by the said District Court of the United States, Southern District of California, Central Division, if said Court shall hold that said suit was wrongfully and improperly removed thereto.

VI

That notice of this petition and the copy thereof and a copy of said bond have been served upon counsel for plaintiffs herein.

WHEREFORE, Your petitioner prays this Court to proceed no further herein except to answer this petition and accept said bond presented herewith, make the proper order for the removal and cause the record of said court to be removed into the said District Court of the United States, Southern District of California, Central Division.

ANAHEIM FIRST NATIONAL BANK,
a National Banking Association,

By J. V. HOGAN

Petitioner

DOCKWEILER and DOCKWEILER AND
BENJAMIN CHIPKIN

By HENRY DOCKWEILER

Henry Dockweiler

Benjamin Chipkin

Dated this 14th day of February, 1936.

[TITLE OF SUPERIOR COURT AND CAUSE.]

No. 33866

BOND ON REMOVAL

KNOW ALL MEN BY THESE PRESENTS:

THAT THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation, duly organized and existing under the laws of the State of New York, and having authority to transact business within the State of California, is held and firmly bound unto L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUPH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAN, J. J. DWYER, M. E. DAY, ERNEST F. GANAHL, FRANK BAUM and JOSEPHINE BAUM, husband and wife in the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) for the payment of which, well and truly to be made to the said L. J. Kelly, F. H. Dolan, Ben Baxter, S. James Tuffree, Ed Kelly, F. A. Yungbluph, Minnie Palmer, formerly known as Minnie Baxter, M. Del Giorgio, Jennie Pomeroy, J. W. Truxan, J. J. Dwyer, M. E. Day, Ernest F. Ganahl, Frank Baum and Josephine Baum, husband and wife, their heirs, executors, administrators and assigns, the said THE FIDELITY AND CASUALTY COMPANY OF NEW YORK binds itself, its successors and assigns, jointly and firmly by these presents, upon condition, nevertheless, that,

WHEREAS, the above named plaintiffs have heretofore brought suit of a civil nature in the Superior Court of the State of California in and for the County of Orange, against the said Anaheim First National Bank, a national banking association, and

WHEREAS, said Anaheim First National Bank, a national banking association, by and through J. V. Hogan, as receiver and acting on behalf of the Anaheim First National Bank, a national banking association, simultaneously with the filing of this bond intends to file its petition in said suit in said state court for the removal of said suit into the District Court of the United States in and for the Southern District of California, Central Division, according to the provisions of the Act of Congress, in such case made and provided:

NOW THEREFORE, the condition of this obligation, is such that, if the said petitioner, Anaheim First National Bank, a national banking association, by and through J. V. Hogan, as receiver and acting on behalf of the Anaheim First National Bank, a national banking association, shall enter in the District Court of the United States for the Southern District of California, Central Division, within thirty days from the date of filing said petition, a certified copy of the record of such suit, and shall well and truly pay all costs that may be awarded by the said District Court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in such suit, if special bail was originally requested thereon, then the above obligation shall be void, but shall otherwise remain in full force and virtue.

IN WITNESS WHEREOF, the said THE FIDELITY AND CASUALTY COMPANY OF NEW YORK has caused these presents to be signed by its duly authorized attorney and its corporate seal to be hereunto affixed at

Los Angeles, California, this 14th day of February,
in the year nineteen hundred and thirty-six.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK
BY WILLIAM J. BENNETT
ATTORNEY (SEAL)

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On this 14th day of February in the year One Thousand Nine Hundred Thirty-Six, before me Paul J. Emme, a notary public in and for said County of Los Angeles, residing therein, duly commissioned and sworn, personally appeared William J. Bennett, known to me to be the ATTORNEY of THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, the corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Los Angeles, the day and year in this certificate first above written.

PAUL J. EMME

Notary Public in and for the County of
Los Angeles, State of California

(SEAL)

My commission expires 5-22-39.

[Endorsed]: Filed Feb 15 1936. J. M. Backs,
County Clerk, By H Deputy Filed March 16, 1936.
R. S. Zimmerman, Clerk By Robert P. Simpson, Deputy.

[TITLE OF SUPERIOR COURT AND CAUSE.]

No. 33866

ORDER FOR REMOVAL TO THE DISTRICT
COURT OF THE UNITED STATES, SOUTH-
ERN DISTRICT OF CALIFORNIA CENTRAL
DIVISION

This cause coming on for hearing upon petition and bond of the defendant, Anaheim First National Bank, a national banking association, for an order transferring this cause to the District Court of the United States, Southern District of California, Central Division, and it appearing to the court that the defendant has filed its petition for such removal in due form of law, and within the time provided by law, and has filed its bond duly conditioned, with good and sufficient surety, as provided by law, and that defendant has given plaintiffs due and legal notice thereof, and it appearing to the Court that this is a proper cause for removal to said District Court of the United States, Southern District of California, Central Division:

NOW THEREFORE, on motion of Benjamin Chipkin and Dockweiler and Dockweiler, attorneys for defendant Anaheim First National Bank, a national banking association, said petition and bond are hereby accepted, and it is hereby ordered and adjudged that this cause be, and it hereby is, removed to the District Court of the United States, Southern District of California, Central Division, and the clerk is hereby directed to make up the record in said cause for transmission to said Court forthwith.

DATED: this 5th day of March, 1936.

G. K. SCOVEL
JUDGE

[Endorsed]: Filed Mar 5 1936 J. M. Backs, County Clerk, By H Deputy. Filed March 16, 1936. R. S. Zimmerman, Clerk By Robert P. Simpson, Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

L. J. KELLY, et al.,)	
	Plaintiffs,	) No. 7522-J
	vs.	) NOTICE OF
ANAHEIM FIRST NATIONAL	)	MOTION TO
BANK, etc., et al.,	)	REMAND
	Defendants.)

TO ANAHEIM FIRST NATIONAL BANK, a national banking association, and to MESSRS. DOCKWEILER AND DOCKWEILER and BENJAMIN CHIPKIN, its attorneys:

YOU AND EACH OF YOU will take notice that on May 11th, 1936, at 10 o'clock A.M., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable William P. James, Judge of the above-entitled court at Los Angeles, I shall apply for an order remanding the above entitled cause to the Superior Court of the County of Orange, State of California, from whence it was removed.

This motion will be made upon the papers and documents in the above numbered file, the motion and memorandum of points and authorities, copies of which are attached hereto, and by this reference made a part hereof and served herewith.

Dated: April 30, 1936.

SPARLING & TEEL,
WM. J. M. HEINZ and
JOSEPH SCOTT
By Joseph Scott
JOSEPH SCOTT

Attorneys for Plaintiffs

[Endorsed]: Filed Apr. 30, 1936. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

MOTION TO REMAND

TO DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION:

Now come the plaintiffs and each of them, and move this court to remand the above entitled cause to the Superior Court of the State of California, in and for the County of Orange, on the ground that this court is without jurisdiction to hear and determine the cause and that said cause was improperly removed to this court from said Superior Court, in that (1) the action here involved is upon a completed contract and is not a case winding up the affairs of a national bank, (2) the action is to establish a claim against the defendant national bank and is brought against said bank and the receiver of said bank is not a party to this action, and (3) the receiver is a proper but not a necessary party to this action.

Dated: April 30, 1936.

SPARLING & TEEL,
WM. J. M. HEINZ and
JOSEPH SCOTT

By Joseph Scott

Joseph Scott

Attorneys for plaintiffs

[Endorsed]: Filed Apr. 30, 1936. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

At a Stated Term, to-wit: the February Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the courtroom thereof, in the City of Los Angeles, on Tuesday, the 12th day of May, in the year of our Lord one thousand nine hundred and thirty-six.

PRESENT: The Honorable: Wm. P. James, District Judge.

L. J. KELLY, et al,)	
)	
	)	Plaintiffs,
vs.)	
ANAHEIM FIRST NATIONAL	)	No. 7522-J
BANK, et al.,	)	LAW
)	
	)	Defendants.

J. V. HOGAN, Receiver, Intervener.

This action having been brought by plaintiffs in the Superior Court of the County of Orange, State of California, the receiver in charge of the assets of said bank, for the purpose of liquidation, filed his intervening petition in said Superior Court, together with his petition for removal of the cause to this Court, which removal was ordered. And on the 11th day of May, 1936, the plaintiffs presented their motion to remand the cause on the ground that no right of removal existed in the receiver of the defendant national bank; and the matter having been argued by respective counsel and submitted to the Court for decision; the Court now concludes that the issues presented are directly concerned with the winding up of the affairs of said national bank and that the receiver as an officer of the United States has the right to a trial of said issues in the United States District Court. It is therefore ordered that the motion to remand be, and it is denied, and an exception is noted in favor of the plaintiffs.

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

NOTICE

TO PLAINTIFFS IN THE ABOVE ENTITLED
ACTION AND TO JOSEPH SCOTT, THEIR
ATTORNEY:

YOU AND EACH OF YOU PLEASE TAKE NO-
TICE that the motion to remand heretofore filed by you,
and heard on May 11th, 1936, before the Honorable
Judge James, has been denied.

BENJAMIN CHIPKIN AND
DOCKWEILER AND DOCKWEILER

By Benjamin Chipkin

Attorneys for defendant

Dated this 16th day of May, 1936.

[Endorsed]: Filed May 25 1936. R. S. Zimmerman,
Clerk. By Robert P. Simpson, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

A N S W E R

Comes now the defendant Anaheim First National Bank, a national banking association, by and thru J. V. Hogan, Receiver of said Anaheim First National Bank, a national banking association and for answer to the complaint on file herein admits, denies and alleges:

I

Answering paragraph I of said complaint, admits F. K. Day is now dead, but denies each and every allegation not admitted herein generally and specifically.

II

Admits paragraph III of said complaint.

III

Answering paragraph IV of said complaint this answering defendant admits that a depreciation existed in the Bond Account of said defendant Anaheim First National Bank on or about June 18th 1931; denies that on or about June 18th 1931 or at any other time or at all did the plaintiffs herein together with other shareholders of said bank enter into an agreement with the said bank, whereby the shareholders of the bank and the said F. K. Day and all of the said plaintiffs herein and each of them agreed to purchase from the said bank the depreciation then existing in the said Bond Account; deny that by the terms of said agreement or any agree-

ment did the Bank agree to pay from time to time to the aforementioned parties any prorata decrease which might from time to time appear in the said depreciation of the said Bond Account of the said bank.

IV

Answering paragraph V of said complaint, this answering defendant denies each and every allegation of said paragraph generally and specifically.

V

Answering paragraph VI of said complaint, this answering defendant admits each and every allegation of said paragraph.

VI

Answering paragraph VII of said complaint, this answering defendant denies each and every allegation of said paragraph generally and specifically.

VII

Answering paragraph VIII of said complaint, this answering defendant admits each and every allegation of paragraph VIII of said complaint.

VIII

Answering paragraph IX of said complaint, this answering defendant admits that L. J. Kelly presented a claim to the Receiver for the sum of \$4900.00 and interest; admits that said claim was not paid, but in this connection, this answering defendant alleges that said claim is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING THE SECOND CAUSE OF ACTION
this answering defendant admits, denies and alleges:

I

Answering paragraph I of said second cause of action this answering defendant adopts its answer to paragraph I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its second cause of action the same as if each paragraph has been set out herein in full.

II

Answering paragraph II of the said second cause of action, this answering defendant denies that F. H. Dolan agreed to pay the bank the sum of \$32,500.00 or any sum whatsoever or at all, pursuant to the alleged agreement of June 18th, 1931; admits that no part of \$32,500.00 has been repaid to defendant F. H. Dolan, but in this connection said defendant alleges that no sum whatsoever is due to plaintiff herein.

III

Answering paragraph III of said second cause of action, this answering defendant denies each and every allegation of said second count generally and specifically.

IV

Answering paragraph IV of the second cause of action, this answering defendant admits that said F. H. Dolan presented a claim to the Receiver for the sum of \$32,500.00, plus interest; admits that said claim was not paid, but in this connection this answering defendant alleges that the said claim is not a valid or subsisting claim against the bank in any manner, whatsoever or at all.

ANSWERING THE THIRD CAUSE OF ACTION,
this defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' third cause of action, this answering defendant adopts its answer to *paragraph I, II, III, IV, VI and VIII* of the first cause of action and makes it part of this its answer to the third cause of action the same as if set out herein in full.

II

Answering paragraph II of the third cause of action, this answering defendant denies that Ben Baxter agreed to pay the sum of \$1750.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$1750.00 has been repaid to plaintiff Ben Baxter, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the Third Cause of Action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of the said third cause of action, this answering defendant admits that plaintiff Ben Baxter presented to the said J. V. Hogan as Receiver a claim for \$1750.00, plus interest; admits that no part of said claim has been paid to plaintiff Ben Baxter, but in that connection defendant alleges that the said bank is not indebted to plaintiff Ben Baxter in any sum whatsoever, or at all and that the alleged claim presented by the said Ben Baxter is not a valid or subsisting claim in any manner whatsoever or at all.

ANSWERING THE FOURTH CAUSE OF ACTION defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' fourth cause of action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the fourth cause of action the same as if set out herein in full.

II

Answering paragraph II of plaintiffs' fourth cause of action, this answering defendant denies that S. James Tuffree agreed to pay to the said bank the sum of \$3500.00 and that pursuant to the alleged agreement of June 18th 1931, the said S. James Tuffree on or about July 17th 1931 did pay the said sum of \$3500.00 to the said bank; admits that no part of the said sum of \$3500.00 has been repaid to plaintiff S. James Tuffree, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the fourth cause of action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of said fourth cause of action, this answering defendant admits that plaintiff S. James Tuffree presented a claim to the Receiver of defendant bank for the sum of \$3500.00 plus interest; admits that said claim was not paid, but in this connection this answering defendant alleges that the said claim is not a valid or subsisting claim against the bank in any manner whatsoever.

ANSWERING PLAINTIFFS' FIFTH CAUSE OF ACTION, this answering defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' fifth cause of action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the fifth cause of action, the same as if set out herein in full.

II

Answering paragraph II of plaintiffs' fifth cause of action, this answering defendant denies that Ed Kelly agreed to pay the sum of \$9,000.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of said sum has been repaid to said plaintiff Ed Kelly, but in this connection said defendant alleges that no sum whatsoever or at all is due plaintiff Ed Kelly from defendant herein.

III

Answering paragraph III of the Fifth Cause of action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of the Fifth Cause of Action, this answering defendant admits that Ed Kelly presented to J. V. Hogan, as Receiver of said bank a claim for \$9,000.00 and interest; admits that no part of said claim has been paid to plaintiff Ed Kelly, but in this connection defendant alleges that the said bank is not indebted to plaintiff Ed Kelly in any sum whatsoever or at all

and that the alleged claim presented by Ed Kelly is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING THE SIXTH CAUSE OF ACTION,
defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' sixth cause of action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the sixth cause of action, the same as if set out herein in full.

II

Answering paragraph II of the sixth cause of action, this answering defendant denies that F. A. Yungbluth agreed to pay to the bank the sum of \$1750.00 or any other sum whatsoever, or at all, pursuant to the alleged agreement of June 18th, 1931; admits that no part of the sum of \$1750.00 has been repaid, to the plaintiff F. A. Yungbluth, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the sixth cause of action, this answering defendant denies each and every allegation generally and specifically.

IV

Answering paragraph IV of the sixth cause of action, this answering defendant admits that plaintiff F. A. Yungbluth duly presented to the said J. V. Hogan, as Receiver of said bank a claim for the sum of \$1750.00 plus inter-

est; admits that no part of said claim has been paid to plaintiff F. A. Yungbluth, but in this connection, defendant alleges that the said bank is not indebted to plaintiff F. A. Yungbluth in any sum whatsoever or at all; that the alleged claim presented by F. A. Yungbluth is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING PLAINTIFFS' SEVENTH CAUSE OF ACTION, this answering defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' Seventh Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of its answer to the Seventh Cause of Action, the same as if set out herein in full.

II

Answering paragraph II of the Seventh Cause of Action, this answering defendant denies that Minnie Palmer, formerly known as Minnie Baxter, agreed to pay the sum of \$3850.00 or any other sum whatsoever, or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$3850.00 has been repaid to the said plaintiff Minnie Palmer, formerly known as Minnie Baxter, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

Answering paragraph III of the Seventh Cause of Action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of the said Seventh Cause of Action, this answering defendant admits that plaintiff Minnie Palmer, formerly known as Minnie Baxter, presented to the Receiver a claim for the sum of \$3850.00 plus interest; admits that no part of said claim has been paid to plaintiff Minnie Palmer, formerly known as Minnie Baxter, but in this connection defendant alleges that the said bank is not indebted to plaintiff Minnie Palmer, formerly known as Minnie Baxter, in any sum whatsoever or at all, and that the alleged claim presented by the said Minnie Palmer, formerly known as Minnie Baxter, is not a valid or subsisting claim in any manner whatsoever or at all.

ANSWERING THE EIGHTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' Eighth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the eighth cause of action, the same as if set out herein in full.

II

Answering paragraph II of plaintiffs' Eighth Cause of Action, this answering defendant denies that plaintiff M. Del Giorgio agreed to pay to the bank the sum of \$875.00, or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th, 1931;

admits that no part of the sum of \$875.00 has been repaid to plaintiff M. Del Giorgio, but in that connection, said defendant alleges that no sum whatsoever or at all is due the plaintiff herein.

III

Answering paragraph III of the eighth cause of action, this defendant denies each and every allegation generally and specifically:

IV

Answering paragraph IV of the said eighth cause of action, this answering defendant admits that plaintiff M. Del Giorgio presented to J. V. Hogan, as Receiver a claim for \$875.00 and interest; admits that no part of said claim has been paid to plaintiff M. Del Giorgio, but in that connection defendant alleges that the said bank is not indebted to plaintiff M. Del Giorgio in any sum whatsoever, or at all and that the alleged claim presented by the said M. Del Giorgio is not a valid or subsisting claim in any manner whatsoever or at all.

ANSWERING THE NINTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' Ninth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of its answer to the Ninth Cause of Action, as if set out herein in full.

II

Answering paragraph II of the Ninth Cause of Action, this answering defendant denies that Jennie Pomeroy

agreed to pay the sum of \$3500.00 or any other sum whatsoever or at all pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$3500.00 has been repaid to the plaintiff Jennie Pomeroy, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the Ninth Cause of Action, this answering defendant denies each and every allegation generally and specifically.

IV

Answering paragraph IV of the said Ninth Cause of Action, this answering defendant admits that plaintiff Jennie Pomeroy duly presented to the said J. V. Hogan, as Receiver, a claim for the sum of \$3500.00, plus interest; admits that no part of said claim has been paid to plaintiff Jennie Pomeroy, but in that connection defendant alleges that the said bank is not indebted to plaintiff Jennie Pomeroy in any sum whatsoever or at all, and that the alleged claim presented by the said Jennie Pomeroy is not a valid or subsisting claim in any manner whatsoever or at all.

ANSWERING THE TENTH CAUSE OF ACTION,
defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' Tenth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the Tenth Cause of Action the same as if set out herein in full.

II

Answering paragraph II of the Tenth Cause of Action, this answering defendant denies that J. W. Truxau agreed to pay the sum of \$1750.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$1750.00 has been paid to plaintiff J. W. Truxaw, but in this connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the Tenth Cause of Action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of the said Tenth Cause of Action, this answering defendant admits that plaintiff J. W. Truxaw presented to J. V. Hogan, as Receiver of said bank a claim for the sum of \$1750.00 plus interest; admits that no part of said claim has been paid to plaintiff J. W. Truxau, but in that connection defendant alleges that the said bank is not indebted to plaintiff J. W. Truxaw in any sum whatsoever or at all and that the alleged claim presented by the said J. W. Truxau is not a valid or subsisting claim in any manner whatsoever or at all.

Answering the Eleventh Cause of Action, this answering defendant admits, denies and alleges:

I

Answering paragraph I of the plaintiffs' Eleventh Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the

first cause of action and makes it part of this its answer to the Eleventh Cause of Action the same as if set out herein in full.

II

Answering paragraph II of the Eleventh Cause of Action, this answering defendant denies that J. J. Dwyer agreed to pay the bank the sum of \$1750.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$1750.00 has been repaid to the plaintiff J. J. Dwyer, but in his connection said defendant alleges that no sum whatsoever or at all is due plaintiff herein.

III

Answering paragraph III of the Eleventh Cause of Action, this answering defendant denies each and every allegation generally and specifically.

IV

Answering paragraph IV of the Eleventh Cause of Action, this answering defendant admits that plaintiff J. J. Dwyer duly presented to the said J. V. Hogan as Receiver of said bank a claim for the sum of \$1750.00 plus interest; admits that no part of said claim has been paid to plaintiff J. J. Dwyer, but in this connection defendant alleges that the said bank is not indebted to plaintiff J. J. Dwyer in any sum whatsoever or at all; that the alleged claim presented by J. J. Dwyer is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING THE TWELFTH CAUSE OF ACTION, defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' Twelfth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first Cause of Action and makes it part of its answer to the Twelfth Cause of Action, the same as if set out herein in full.

II

Answering paragraph II of the Twelfth Cause of Action, this answering defendant denies that F. K. Day agreed to pay the sum of \$875.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that no part of the sum of \$875.00 has been repaid to F. K. Day or plaintiff M. E. Day by the said bank, but in that connection defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the Twelfth Cause of Action, this answering defendant denies each and every allegation of said paragraph generally and specifically.

IV

Answering paragraph IV of said Twelfth Cause of Action, this answering defendant denies each and every allegation generally and specifically.

ANSWERING THE THIRTEENTH CAUSE OF ACTION, defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' Thirteenth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the Thirteenth Cause of Action, the same as if set out herein in full.

II

Answering paragraph II of plaintiffs' Thirteenth Cause of Action, this answering defendant denies that Ernest F. Ganahl agreed to pay to the bank the sum of \$1750.00 or any sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that the said Ernest F. Ganahl did on or about July 7th 1931 execute his promissory note in the sum of \$1750.00; admits that said Ernest F. Ganahl has paid on account of principal the sum of \$550.89 and interest in the sum of \$150.31; admits that the said bank is the holder of the note and money paid thereon; admits that no part thereof has been repaid to the said Ernest F. Ganahl by the bank, but in that connection said defendant alleges that no sum whatsoever or at all is due to plaintiff herein.

III

Answering paragraph III of the Thirteenth Cause of Action, this answering defendant denies each and every allegation generally and specifically.

IV

Answering paragraph IV of the Thirteenth Cause of Action, this answering defendant admits that plaintiff Ernest F. Ganahl duly presented to J. V. Hogan, as Re-

ceiver of said bank his claim for the sum of \$1750.00 plus interest; admits that no part of said claim has been paid to plaintiff Ernest F. Ganahl, but in this connection defendant alleges that the said bank is not indebted to Ernest F. Ganahl in any sum whatsoever or at all; that the alleged claim presented by the said Ernest F. Ganahl is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING THE FOURTEENTH CAUSE OF ACTION defendant admits, denies and alleges:

I

Answering paragraph I of plaintiffs' Fourteenth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, IV, VI and VIII of the first cause of action and makes it part of this its answer to the Fourteenth Cause of action the same as if set out herein in full.

II

Answering paragraph II of the said Fourteenth Cause of Action, this answering defendant denies that plaintiff Frank Baum agreed to pay the bank the sum of \$5250.00 or any other sum whatsoever or at all, pursuant to the alleged agreement of June 18th 1931; admits that Frank Baum executed a promissory note to the bank dated December 19th 1932, in the sum of \$5250.00; admits that the said Frank Baum paid the sum of \$352.74 on account of interest on said note; admits that on or about May 9th 1933, the plaintiffs Frank Baum and Josephine Baum executed and delivered to the said bank a trust deed on property described therein and to which description reference is made to said paragraph II of the said Fourteenth Cause of Action; admits that said trust deed

was recorded on May 22nd 1933 at page 8, Vol. 618, Official Records, Orange County, California; admits that no part of the money paid in by plaintiff Frank Baum has been repaid by the said bank, but in this connection defendant alleges that no sum whatsoever or at all is due to plaintiffs herein.

III

Answering paragraph III of said Fourteenth Cause of Action, this answering defendant denies each and every allegation generally and specifically.

IV

Answering paragraph IV of the Fourteenth Cause of Action, this answering defendant admits that plaintiffs Frank Baum and Josephine Baum have duly presented to the said J. V. Hogan, as Receiver of said bank a claim for the sum of \$5250.00 plus interest; admits that no part of said claim has been paid to plaintiffs Frank Baum and Josephine Baum, but in this connection defendant alleges that the said bank is not indebted to plaintiffs Frank Baum and Josephine Baum in any sum whatsoever or at all; that the alleged claim presented by Frank Baum and Josephine Baum is not a valid or subsisting claim against the bank in any manner whatsoever or at all.

ANSWERING THE FIFTEENTH CAUSE OF ACTION, this answering defendant admits, denies and alleges:

I

Answering paragraph I of the Fifteenth Cause of Action, this answering defendant adopts its answer to paragraphs I, II, III, VIII and IX of the first cause of action and makes it part of his answer to paragraph

I of this count, the same as if said answer and each paragraph has been set out herein in full.

II

Answering paragraph II of said Fifteenth Cause of Action, this answering defendant denies each and every allegation generally and specifically.

ANSWERING THE SIXTEENTH CAUSE OF ACTION, this answering defendant admits, denies and alleges:

I

Answering paragraph I of the Sixteenth Cause of Action, this answering defendant adopts its answer to *paragraph* I, II, III, and VIII of the first cause of action and paragraph IV of the second cause of action and makes it part of this his answer to said paragraph I of the Sixteenth Cause of Action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the said Sixteenth Cause of Action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE SEVENTEENTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Seventeenth Cause of Action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the third cause of action and makes it part of this his answer to said paragraph I of the Seventeenth Cause of Action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Seventeenth Cause of Action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE EIGHTEENTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Eighteenth Cause of Action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the fourth cause of action and makes it part of this his answer to said paragraph I of the Eighteenth Cause of Action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Eighteenth Cause of Action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE NINETEENTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Nineteenth Cause of Action, this answering defendant adopts its answer to *paragraph* I, II, III, and VIII of the first cause of action and paragraph IV of the fifth cause of action and makes it part of this his answer to said paragraph I of the Nineteenth Cause of Action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the said Nineteenth Cause of Action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTIETH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twentieth Cause of Action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the sixth cause of action and makes it part of this his answer to said paragraph I of the Twentieth Cause of Action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twentieth Cause of Action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-FIRST CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-first cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the seventh cause of action and makes it part of this his answer to said paragraph I of the Twenty-first cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-first cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-SECOND CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-second cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the eighth cause of action and makes it part of this his answer to said paragraph I of the Twenty-second cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-second cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-THIRD CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-third cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the ninth cause of action and makes it part of this his answer to said paragraph I of the twenty-third cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-third cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-FOURTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-fourth cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the tenth cause of action and makes it part of this his answer to said paragraph I of the Twenty-fourth cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-fourth cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-FIFTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-fifth cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the eleventh cause of action and makes it part of this his answer to said paragraph I of the twenty-fifth cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-fifth cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-SIXTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-sixth cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the twelfth cause of action and makes it part of this his answer to said paragraph I of the Twenty-sixth cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-sixth cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-SEVENTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Ansering paragraph I of the Twenty-seventh cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the thirteenth cause of action and makes it part of this his answer to said paragraph I of the Twenty-seventh cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-seventh cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

ANSWERING THE TWENTY-EIGHTH CAUSE OF ACTION, this defendant admits, denies and alleges:

I

Answering paragraph I of the Twenty-eighth cause of action, this answering defendant adopts its answer to *paragraph* I, II, III and VIII of the first cause of action and paragraph IV of the fourteenth cause of action and makes it part of this his answer to said paragraph I of the Twenty-eighth cause of action, the same as if each of said paragraphs have been set out herein in full.

II

Answering paragraph II of the Twenty-eighth cause of action, this answering defendant denies each and every allegation thereof generally and specifically.

WHEREFORE, defendant prays judgment that plaintiffs and each of them take nothing by their complaint and that defendant have judgment for costs and disbursements incurred in this cause.

DOCKWEILER & DOCKWEILER &
BENJAMIN CHIPKIN

By: Benjamin Chipkin

Attorneys for Defendant.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J
(No. 33866 SCOCO)

ORDER RE WITHDRAWAL OF FRANK BAUM and
JOSEPHINE BAUM AS PARTIES
PLAINTIFF

Upon reading the attached document entitled DISMISSAL OF FRANK BAUM AND JOSEPHINE BAUM, and good cause appearing therefor, it is, on motion of Messrs. Dockweiler & Dockweiler and Benjamin Chipkin, attorneys for defendant Anaheim First National Bank, a national banking association, ORDERED AND ADJUDGED that plaintiffs Frank Baum and Josephine BAUM, husband and wife, have, and each of them has, withdrawn as parties plaintiff in said action; and

IT IS FURTHER ORDERED that the cause of action of said plaintiffs Frank Baum and Josephine Baum, husband and wife, set forth in the complaint on file in the above entitled matter herein be, and the same, is hereby, dismissed so far as the same affects and relates to said plaintiffs Frank Baum and Josephine Baum, husband and wife.

Dated the 5 day of June, 1937.

Wm. P. James
United States District Judge

Dismissal entered and recorded Jun 5 - 1937

R. S. ZIMMERMAN,
Clerk

By Murray E. Wire
Deputy Clerk.

The above order is approved as to form, as provided
in Rule 44.

Dated: June 2, 1937.

SPARLING & TEEL,
Wm. J. M. HEINZ
and JOSEPH SCOTT

By Wm. J. M. Heinz
(Wm. J. M. Heinz)

Attorneys for plaintiffs Frank Baum and Josephine
Baum, husband and wife.

DOCKWEILER & DOCKWEILER AND
BENJAMIN CHIPKIN

By Henry I. Dockweiler

Attorneys for defendant Anahim First National
Bank

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

(No. 33866 S C O Co)

DISMISSAL OF FRANK BAUM AND
JOSEPHINE BAUM

TO R. S. ZIMMERMAN, CLERK, AND TO THE
HONORABLE WM. P. JAMES, Judge of the
above entitled Court:

Dismissal is hereby made by Frank Baum and Josephine Baum, husband and wife, plaintiffs in the above entitled action of their said cause of action in said matter, and the above entitled court is hereby requested to dismiss said action and the above named clerk is hereby directed to enter the dismissal of said Frank Baum and Josephine Baum in said matter.

SPARLING & TEEL
WM. J. M. HEINZ and
JOSEPH SCOTT

By Wm. J. M. Heinz
Wm. J. M. Heinz

Attorneys for said plaintiffs

[Endorsed]: Filed Jun. 5, 1937. R. S. Zimmerman,
Clerk, By Murray E. Wire, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

WAIVER OF JURY TRIAL

Come now the plaintiffs in the above entitled action, and hereby waive a trial of said action by a jury.

Dated: July 19, 1937.

JOSEPH SCOTT
SPARLING & TEEL
EDWARD C. PURPUS

By Edw. C. Purpus

Attorneys for plaintiff

[Endorsed]: Filed Jul. 20, 1937. R. S. Zimmerman,
Clerk. By Murray E. Wire, Deputy Clerk.

At a stated term, to-wit: The September Term, A. D. 1937, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 10th day of January, in the year of our Lord one thousand nine hundred, and thirty-eight.

Present:

The Honorable: WM P. JAMES District Judge.

L. J. KELLY, et al.,)	
)	
	)	Plaintiffs,
	)	No. 7522-J
)	
vs)	
)	
ANAHEIM FIRST NATIONAL)	
BANK, etc., et al.,)	
	)	Defendants.

This cause having heretofore been tried before the court, whereupon evidence was received, and after argument on briefs as filed by respective counsel, was submitted for decision; and the court now having considered

the law and the evidence, determines and orders that findings and judgment be entered in favor of the defendants. Particularly, the court determines that the contributions as made by the plaintiffs to the bank were voluntary, both because of the requirement of the law in that respect, and further, because of their acquiescence for a long period of time in the notification given by the Comptroller of the Treasury that such contributions must be so considered when made; further, that other questions aside, no evidence is offered as to any appreciation in the value of the bonds alleged to have been purchased by the plaintiffs, and hence no evidence appears of any legal damage or loss suffered. An exception will be noted in favor of the plaintiffs upon the entry of the findings and judgment as ordered.

At a stated term, to-wit: The February Term, A. D. 1938, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 2nd day of March in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: WM P. JAMES District Judge.

L. J. KELLY, et al,)	
)	
	)	Plaintiffs,
)	
)	
vs.	)	No. 7522-J
)	
ANAHEIM FIRST NATIONAL)	
BANK, a national banking association,)	
	)	Defendant.
_____)	

This cause having heretofore been tried before the Court, whereupon evidence was introduced for respective parties; thereafter argument was made by briefs duly filed; and thereafter the Court having considered the law and the evidence, directed that findings and judgment be entered in favor of the defendant Anaheim First National

Bank. And now the said defendant by its counsel having presented findings and judgment in written form, to which Wm. J. M. Heinz, Esquire, attorney for plaintiff Ernest F. Ganahl and Charles C. Montgomery, Esquire, with his co-counsel, as attorneys for all remaining plaintiffs except Ernest Ganahl, having filed exceptions to the proposed findings and suggested amendments thereto, all of which have been considered by the Court. And the Court now adopts the findings and judgment as prepared by the defendant bank, and denies the exceptions and proposed amendments of plaintiffs. Findings and judgment are accordingly signed and filed with the Clerk, and an exception is noted in favor of all plaintiffs. Correction was made of the numbering of certain paragraphs of the findings of fact.

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

The above entitled cause came on for trial on July 20 and 21, 1937, in the above entitled court, before the Honorable William P. James, Judge presiding, the court sitting without a jury, a jury trial having been duly and regularly waived by the respective parties hereto by oral stipulation entered in the minutes of this court and by stipulation in writing filed with this court and the clerk thereof; said trial being had as to all plaintiffs except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects and relates to them; Messrs. Joseph Scott, Charles C. Montgomery, Sr. and Charles C. Montgomery, Jr., Edward C. Purpus, W. J. Heinz and A. H. Risse appearing as attorneys for plaintiffs, and Messrs. Dockweiler & Dockweiler, by Henry I. Dockweiler, Esquire, and Benjamin Chipkin, Esquire, appearing as attorneys for defendant Anaheim First National Bank, a national banking association; and evidence, both oral and documentary, having been introduced on behalf of the respective parties and the cause having been argued and submitted for decision, the court now makes its findings of fact and conclusions of law as follows, to-wit:

FINDINGS OF FACT

I

That it is true that plaintiff F. K. Day is now, and since a time prior to the commencement of the above action has been, dead.

II

That it is true that plaintiff Minnie Palmer was formerly known as Minnie Baxter.

III

That it is true that defendant Anaheim First National Bank is now, and at all times mentioned in the complaint on file herein was, a national banking association organized and existing under the statutes of the United States known as the National Bank Act, that said Bank has at all times had its place of business at Anaheim, Orange County, State of California, that on January 15, 1934, said Bank was declared insolvent by the Comptroller of the Currency of the United States, that on said date said Comptroller appointed J. V. Hogan as receiver of said Bank, and that ever since said date said Hogan has been and now is the duly appointed, qualified and acting receiver of said Bank.

IV

That it is true that on or about November 18, 1931 a depreciation existed in the bond account of said Bank, that at said time F. K. Day and all of the plaintiffs named in said complaint, except M. E. Day and Josephine Baum, were shareholders in said Bank; but it is not true that on or about said date or at any other time said F. K. Day and all of said plaintiffs, except M. E. Day and Josephine Baum, together with other sharehold-

ers of said Bank, or any of them, entered into an agreement with said Bank whereby the said other shareholders of said Bank and said F. K. Day and all of the said plaintiffs, except M. E. Day and Josephine Baum, or any of them, agreed to purchase from said Bank said depreciation then existing in said bond account; and it is not true that by the terms of any such agreement said Bank agreed to pay from time to time to the aforesaid parties, or to any of them, any prorata decrease which might from time to time appear in said depreciation of said bond account.

V

That it is not true that in any such agreement, as set forth in said complaint or otherwise, the following persons respectively agreed to pay to said Bank the following, or any other, sums:

L. J. Kelly	\$ 4,900.00
F. H. Dolan	32,500.00
Ben Baxter	1,750.00
S. James Tuffree	3,500.00
Ed. Kelly	9,000.00
F. A. Yungbluth	1,700.00
Minner Palmer (formerly known as Minnie Baxter)	3,850.00
M. Del Giorgio	875.00
Jennie Pomeroy	3,500.00
J. W. Truxaw	1,750.00
J. J. Dwyer	1,750.00
F. K. Day	875.00
Ernest F. Ganahl	1,750.00 and
Frank Baum	5,250.00;

and it is not true that pursuant to any such agreement said persons, excepting Ernest F. Ganahl and Frank Baum, on or about July 17, 1931, paid to said Bank the sums hereinabove set opposite their respective names and it is not true that pursuant to any such agreement said Ernest F. Ganahl on or about July 17, 1931 executed his promissory note for \$1,750.00 to said Bank or that, pursuant to such agreement he made any payments of principal or interest on such a note; and it is not true that pursuant to any such agreement said Frank Baum executed his promissory note dated December 19, 1932 for \$5,250.00 to said Bank or that pursuant to such agreement he paid interest on said note, or that, pursuant to such agreement, plaintiffs Frank Baum and Josephine Baum on or about May 9, 1933 executed and delivered to said Bank a certain trust deed on the property described in the fourteenth count of the complaint on file herein; that it is true that on or about July 17, 1931 the above named persons, except Ernest F. Ganahl and Frank Baum paid to said Bank the sums of money hereinabove set opposite their respective names, and it is further true that on or about July 7, 1931, said Ernest F. Ganahl executed to said Bank his promissory note for \$1,750.00, and it is further true that said Frank Baum executed to said Bank his promissory note dated December 19, 1932 for \$5,250.00, and it is also true that subsequently said Frank Baum and Josephine Baum executed and delivered to said Bank a trust deed covering certain property described in the fourteenth count of said complaint, but said payments were made and said notes and trust deed were executed and delivered by said persons as voluntary contributions to said Bank and said Bank was not and is not obligated under any such agreement or other-

wise to repay said sums or any part thereof, and said Bank has not repaid the same or any part thereof.

VI

~~VII~~

That it is true that on or about January 15, 1934 said Hogan, as such receiver, took possession of all the assets of said Bank, including said bond account, and has been and is engaged in liquidating the same.

VII

~~VIII~~

That it is not true that by reason of the appointment of said receiver and the liquidation of the assets of said Bank, including said bond account, or otherwise, there has been any failure of consideration, wholly or partially, for the respective payments hereinabove set forth as having been made by said persons to said Bank; and it is not true that by reason of any matters or things set forth in plaintiffs' complaint said Bank has become and is now, or ever was, indebted to any of said persons above named or to any of the plaintiffs herein for or on account of any sums of money whatsoever, either as principal or interest.

VIII

~~IX~~

That it is true that on or about May 31, 1934 said Comptroller of the Currency published his notice requiring all persons having claims against said Bank to present their said claims to said Hogan, as such receiver, with the legal proof thereof within three months from said date.

IX

~~X~~

That it is true that on or about August 23, 1934 said L. J. Kelly, F. H. Dolan, Ben Baxter, S. James Tuffree, Ed Kelly, F. A. Yungbluth, Minnie Palmer (formerly known as Minnie Baxter), M. Del Giorgio, Jennie Pomeroy, J. W. Truxaw, J. J. Dwyer, Ernest F. Ganahl, Frank Baum and Josephine Baum, presented to said Hogan, as such receiver, their respective claims for the respective sums of money so paid by them to said Bank as hereinabove set forth, plus interest thereon; and it is also true that on or about August 23, 1934, plaintiff M. E. Day presented to said Hogan, as such receiver, her claim for said sum of \$875.00 paid to said Bank by said F. K. Day, with interest thereon, all in the manner and form required by said Comptroller of the Currency; and it is also true that none of said claims, or any part thereof, has been paid; but it is also true that none of said claims was a valid or proper claim against said Bank or in the matter of the receivership of said Bank.

X

~~XI~~

That it is not true that within two years prior to the preparation of the complaint on file herein, or within two years prior to the filing thereof, the persons hereinabove in Finding No. V named loaned respectively to said Bank the sums respectively set after their names in said Finding No. V; and it is not true that said Bank received said respective sums, or any of said sums or any part thereof, for the use and benefit, or use or benefit, respectively of said persons, or any of said persons, whose names are set forth in said Finding No. V; and it is not true that said Bank promised to repay said sums on de-

mand or otherwise; and it is true that while said sums have not been repaid to any of said respective persons, although demand has been made therefor, it is also true that said Bank is in no way obligated, in the matter of said receivership or otherwise, to repay said sums or any part thereof to said persons or to any persons or person whomsoever.

XI

~~XII~~

It is also true that on various occasions and at various times between July 1930 and November 1931 said Comptroller of the Currency, through his duly authorized deputy comptrollers, notified and instructed said Bank, and the officers and directors thereof, that payments made to repair the impaired capital of said Bank must be considered as voluntary and unconditional contributions, without obligation of repayment; that each and all of said persons who made said payments hereinabove referred to acquiesced by lapse of time and otherwise in said notification and instruction of said Comptroller of the Currency; that said payments were payments made to repair the impaired capital of said Bank and were, each and all, voluntary and unconditional contributions, without any obligation whatsoever on the part of said Bank to repay same; that the law requires all payments such as those made by plaintiffs under the circumstances shown by the evidence herein to be voluntary and unconditional and without any obligation whatsoever on the part of the bank to repay same.

XII
XIII

That it is true that no evidence has been presented to this court proving any appreciation in the value of the bonds in said bond account, the depreciation in which bond account is alleged by plaintiffs to have been purchased by plaintiffs or, in the case of plaintiff M. E. Day, her predecessor in interest F. K. Day; and that no evidence has been presented to this court of any legal damage or loss suffered or sustained by plaintiffs or any of them.

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts the court finds:

I

That there did not exist any contract between said Bank and the persons who made the payments to said Bank hereinabove set forth whereunder and whereby said Bank was obligated to repay said sums or any part thereof; that said payments were voluntary and unconditional contributions to said Bank, and were such because of the requirement of the law in that respect and because of the acquiescence by said persons for a long period of time in the notification and instruction given by the Comptroller of the Currency that such contributions must when made be considered as voluntary and unconditional contributions without obligation on the part of the Bank to repay same.

II

That none of the plaintiffs herein is entitled to recover any sum so paid to said Bank or any promissory note

given to said Bank to cover his contribution, as herein-above set forth, either under causes of action numbers I to XIV, inclusive, or under causes of action numbers XV to XXVIII, inclusive, of plaintiffs' complaint on file herein.

III

That defendant Anaheim First National Bank, a national banking association, is entitled to judgment herein, together with its costs of suit.

Let judgment be entered in conformity herewith.

Dated this 28 day of February, 1938.

Wm P. James
Judge of said District Court

Not Approved as to form, as provided for in Rule 44:

JOSEPH SCOTT,
CHARLES C. MONTGOMERY, Sr.,
CHARLES C. MONTGOMERY, Jr.,
EDWARD C. PURPUS,

By Charles C. Montgomery

Attorneys for Plaintiffs except Ganahl Objections
herewith

Wm. J. M. Heinz
(Wm. J. M. Heinz)
Attorney for plaintiff Ernest Ganahl

Objections served and filed herewith.

W J M H.

[Endorsed]: Filed Mar. 2, 1938. R. S. Zimmerman,
Clerk By Murray E. Wire, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION

L. J. KELLY, et al,)	
	Plaintiffs,)
vs.	)	NO. 7522-J
ANAHEIM FIRST NATIONAL	)	JUDGMENT
BANK, a national banking associa-)	
tion, et al,)	
	Defendants.)
<hr style="width: 60%; margin-left: 0;"/>)

The above-entitled action came on for trial on July 20 and 21, 1937, in the above entitled court, before the Honorable William P. James, Judge Presiding, the court sitting without a jury, a jury trial having been duly and regularly waived by the respective parties hereto by oral stipulation entered in the minutes of this court, and by stipulation in writing filed with this court and the clerk thereof; said trial being had as to all plaintiffs except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein on June 5, 1937, been dismissed so far as the same affects and relates to them; Messrs. Joseph Scott, Charles C. Montgomery, Sr., Charles C. Montgomery, Jr., Edward C. Purpus, W. J. Heinz and A. H. Risse, appearing as attorneys for plaintiffs, and Messrs. Dockweiler & Dockweiler, by Henry I. Dockweiler, Esquire, and Benjamin Chipkin, Esquire, appearing as attorneys for defendant Anaheim First National Bank, a national banking association, and evidence, both oral and documentary, having been introduced on behalf of the respective parties and the cause having been argued

and submitted for decision, and the court having made its findings of fact and conclusions of law and being fully advised in the premises:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs have and recover nothing from defendant Anaheim First National Bank, a national banking association, by virtue of said action, that the same be dismissed, and that defendant Anaheim First National Bank, a national banking association, have and recover its costs of suit herein taxed at \$50.10.

Dated: This 28 day of February, 1938.

Wm. P. James

Judge of the District Court of the United States,
Southern District of California, Central Division.

Approved as to form under Rule 44 this 16th day of February, 1938:

JOSEPH SCOTT,
CHARLES C. MONTGOMERY, SR.,
CHARLES C. MONTGOMERY, JR.,
EDWARD C. PURPUS

By Charles C. Montgomery

Attorneys for plaintiffs except as to plaintiff Ernest F. Ganahl represented by W. J. Heinz and A. H. Risse.

Wm. J. M. Heinz

(Wm. J. M. Heinz)

Attorney for plaintiff Ernest Ganahl.

Judgment entered and recorded Mar 2, 1938. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

[Endorsed]: Filed Mar. 2, 1938. R. S. Zimmerman, Clerk, By Murray E. Wire, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

BILL OF EXCEPTIONS

Be it remembered that on the 20th and 21st days of July, 1937, the above-entitled cause came on for trial before this Court, Honorable Wm. P. James, judge presiding, the court sitting without a jury, a jury trial having been waived by counsel for the respective parties.

The case was submitted upon written briefs and oral testimony and documentary evidence.

Plaintiffs (except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects and relates to them) appeared by Messrs. Joseph Scott, Charles C. Montgomery, Sr., Charles C. Montgomery, Jr., Edward C. Purpus, W. J. M. Heinz and A. H. Risse and the defendant appeared by Messrs. Dockweiler & Dockweiler, by Henry I. Dockweiler, Esquire, and Benjamin Chipkin, Esquire.

EXCEPTION NO. 1

The Court on January 10, 1938 made and entered an opinion and a Minute Order wherein the Court determined "That the contributions as made by the plaintiffs were voluntary, both because of the requirements of the

law in that respect, and further because of their acquiescence for a long period of time in the notification given by the Comptroller of the Currency that such contributions must be so considered when made; further, that other questions aside, no evidence is offered as to any appreciation in the value of the bonds alleged to have been purchased by the plaintiffs, and hence no evidence appears of any legal damage or loss suffered." The Court in the said Minute Order stated that an exception would be noted in favor of the plaintiffs upon the entry of the Findings and Judgment, and ordered the defendants to present a Judgment for defendants and Findings under Rule 44.

—...—

EXCEPTION NO. 2

On the 16th day of February, 1938, Proposed Findings of Fact, Conclusions of Law and Judgment for the defendants were presented. Counsel for plaintiffs filed objections to the said Findings of Fact, Conclusions of Law and Judgment but the Court disallowed the Objections and signed the same, but noted an exception in favor of the plaintiffs' Objections to Findings of Fact and Conclusions of Law as follows:

“IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION

L. J. KELLY, et al.,)	
	)	NO. 7522-J
Plaintiffs,)	
	)	OBJECTIONS
vs.	)	TO FINDINGS
	)	OF FACTS
ANAHEIM FIRST NATIONAL	)	AND
BANK, a national banking associa-	)	CONCLUSIONS
tion, et al.,	)	OF LAW
Defendants.)	

Findings IV and V are not justified by the Memo of Decision and are contrary to law and fact, a contract having been made.

Finding No. VI does not appear. An error in numbering. All after V should be *remembered*.

Finding VIII (should be VII) is not supported by the law or the evidence. It is contrary to the lately decided case of *Briney v. Mortimer*. (C. C. A.) 93 F. (2) 800.

Finding XII (should be XI) is contrary to the undisputed evidence as to Minnie Palmer, Jennie Palmer, M. Del Giorgio and F. A. Youngbluth.

Finding XIII (should be XII) is contrary to the evidence, showing an appreciation of some of the bonds in the list.

Exception is taken to each unfavorable ruling and finding.

CHARLES C. MONTGOMERY

EDW. C. PURPUS

JOSEPH SCOTT

CHARLES C. MONTGOMERY, JR.

Attorneys for plaintiffs except Ernest Ganahl”

EXCEPTION NO. 3.

Counsel for plaintiffs (except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects and relates to them) on January 19, 1938, filed a Motion for New Trial and Points and Authorities in Support of Motion for New Trial, as follows:

“IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)	
BAXTER, S. JAMES TUFFREE,)	
ED KELLY, F. A. YUNGBLUTH,)	
MINNIE PALMER, formerly known)	
as MINNIE BAXTER, M. DEL)	
GIORGIO, JENNIE POMEROY, J.)	
W. TRUXAW, J. J. DWYER, M. E.)	NO. 7522-J
DAY, ERNEST F. GANAHL,)	
)	Motion for
Plaintiffs,)	New Trial
vs.)	
)	
ANAHEIM FIRST NATIONAL)	
BANK, a national banking associa-)	
tion, et al,)	
)	
Defendants.)	
)	

COME NOW the plaintiffs, F. H. DOLAN, S. JAMES TUFFREE, ED KELLY, F. A. YOUNGBLUTH, MINNIE PALMER, formerly known as M.

BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER, ERNEST GANAHL and L. J. KELLY, and move for a New Trial of the above-entitled action, on the following grounds, to-wit:

1. Insufficiency of the evidence to justify the decision denying plaintiffs relief, particularly in determining that the contributions as made by the Plaintiffs to the Bank were voluntary, both because of the requirement of the law in that respect, and further, because of their acquiescence for a long period of time in the notification given by the Comptroller of the Treasury that such contributions must be so considered when made.

2. That the decision is against the law in finding as to the plaintiffs that their contributions were voluntary.

3. That the decision is against law in finding “. . . no evidence is offered as to any appreciation in the value of the bonds alleged to have been purchased by the plaintiffs, and hence no evidence appears of any legal damage or loss suffered.”

4. Error in law occurring at the trial, excepted to by plaintiffs now making the application, in receiving in evidence and considering the correspondence between the Comptroller of the Treasury and the Anaheim First National Bank, as immaterial, irrelevant and incompetent, and particularly as having no bearing on any of the issues in so far as the Plaintiffs Minnie Palmer, M. Del Giorgio and Jennie Palmer and F. A. Youngbluth are concerned, they having no knowledge or notice of anything to put them on inquiry as to any such correspondence with the Comptroller of the Treasury.

5. That the decision is against law in finding against the plaintiffs that “no evidence appears as to any legal

damage or loss suffered." The failure of the Bank to continue as a going concern violated (Plaintiffs) purchasers contractual rights.

Dated: Los Angeles, California, January 18, 1938.

EDW. C. PURPUS
 CHARLES C. MONTGOMERY
 JOSEPH SCOTT
 CHARLES C. MONTGOMERY JR.
 Attorneys for Moving Plaintiffs."

and the said Motion for New Trial was duly noticed for hearing on the 25th day of April, 1938, as follows:

"IN THE DISTRICT COURT OF THE UNITED
 STATES SOUTHERN DISTRICT OF CALI-
 FORNIA, CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)	
BAXTER, S. JAMES TUFFREE,)	
ED KELLY, F. A. YUNGBLUTH,)	
MINNIE PALMER, formerly known)	
as MINNIE BAXTER, M. DEL)	NO. 7522-J
GIORGIO, JENNIE POMEROY, J.)	
W. TRUXAW, J. J. DWYER, M. E.)	NOTICE OF
DAY, ERNEST F. GANAHL,)	HEARING
	) OF MOTION
Plaintiffs,)	FOR NEW
vs.)	TRIAL
)
ANAHEIM FIRST NATIONAL)	
BANK, a National Banking Associa-)	
tion, et al.,)	
Defendants.)	
_____)	

TO DEFENDANT ABOVE NAMED, and to DOCKWEILER & DOCKWEILER, and BENJAMIN CHIPKIN, ESQ. its attorneys:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the plaintiffs F. H. Dolan, S. James *Truffee*, Ed Kelly, F. A. Youngbluth, Minnie Palmer, formerly known as Minnie Baxter, M. Del Giorgio, Jennie Pomeroy, J. W. Truxaw, J. J. Dwyer, Ernest Ganahl and L. J. Kelly, on the 25th day of April, 1938, in the Court Room of Hon. Wm. P. James, District Judge, located at Room 582 Pacific Electric Building, Los Angeles, California, at the hour of ten o'clock A. M. or as soon thereafter as counsel can be heard, will move the above named Court to hear and consider the Motion for New Trial heretofore filed herein on or about January 19, 1938. Said Motion will be made on the Minutes of said Court, on said Motion for New Trial, and upon the Points and Authorities in support thereof filed contemporaneously therewith.

Dated: April 11, 1938.

EDW. C. PURPUS
 CHARLES C. MONTGOMERY
 JOSEPH SCOTT
 CHARLES C. MONTGOMERY JR.
 Attorneys for Moving Plaintiffs."

The Court on May 13, 1938, caused his Minute Order to be entered denying plaintiffs' Motion for New Trial, but noted an exception in behalf of the plaintiffs. Copy of said Minute Order is as follows:

“(MINUTE ORDER)

L. J. KELLY, et al.,)	
	Plaintiffs,)
	vs.)
ANAHEIM FIRST NATIONAL BANK,	)	NO. 7522-J
a national banking association, et al.,)	
	Defendants.)
<hr/>)

A Motion made on the part of the plaintiffs for the granting of a new trial herein having been presented to the court, and after argument of counsel, submitted for ruling; and the court now having considered the matter, determines that the motion for a new trial should be denied. It is so ordered, and an exception is noted in behalf of the plaintiffs.

(Entered on Judge James' Minutes' May 13, 1938.)

Copies mailed to:

Edward C. Purpus, Esq.,
 430 L. A. Stock Exchange Bldg.,
 639 South Spring Street,
 Los Angeles, California.

Charles C. Montgomery, Esq.,
 810 Title Guarantee Bldg.,
 411 West Fifth St., Los Angeles.

Joseph Scott, Esq.,
 1001 Black Bldg., 357 So. Hill St.,
 Los Angeles, California.

Dockweiler & Dockweiler, Esqs.,
 For Henry I. Dockweiler, Esq.,
 1035 Van Nuys Building,
 210 West Seventh Street,
 Los Angeles, California.”

(Testimony of R. Foster Lamm)

EXCEPTION I-A

Findings and Judgment.

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The Evidence hereafter will refer to Exceptions No. 1, 1-A, 2 and 3, as well as the Exceptions separately noted.

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I

That

R. FOSTER LAMM,

a witness for plaintiffs testified in part as follows: That R. FOSTER LAMM was duly appointed as Bank Examiner by the Comptroller of the Currency; that R. FOSTER LAMM, one of the above named bank examiners upon examining the assets of the ANAHEIM FIRST NATIONAL BANK, a national banking association, notified the directors thereof that the bond account of said bank was deficient; that thereupon the directors inquired of the said R. FOSTER LAMM what could be done about the matter; that the said R. FOSTER LAMM then suggested that they follow the same procedure which he had caused the First National Bank of Huntington Beach, California, to follow in 1929, namely, that the directors purchase the said depreciation in the bond account which would give them a possibility of return of the money that they put in the surplus account or undivided profit account.

(Testimony of R. Foster Lamm)

As to the circumstances surrounding the so-called contributions (Page 75 of Reporter's Transcript of Testimony and Proceedings on Trial, reading from Line 8 to Line 21, inclusive), quote:

"A Yes, sir. As I recollect the whole thing, we held a board meeting, called a board meeting following the completion of the examination. What the figures were of the losses I don't remember. We discussed ways and means to restore the capital impairment. We discussed the possible effect of an assessment, and finally talked about a contribution. The question was raised at that time, if the directors contributed money to the bank would there be any chance of them getting it back again. We devised a scheme whereby if they contributed to the bank what they would do would be to actually buy the depreciation of the bond account. That would give them a possibility of return of the money that they put in the surplus account or undivided profit account."

-----...-----

"THE COURT: Q In the instance that you have given was it entered on the records of the bank?

A Yes, sir; it had to be.

Q BY MR. DOCKWEILER: How was it entered?

A The bond was charged down and the undivided profits to the new carrying value.

Q To its carrying value?

A Yes, sir. That would deplete the undivided profits account first, and then your surplus, and then into the capital. Before it gets into the capital the contribution goes into the undivided profit account and restores the undivided profit account. In other words, they buy the charged-off assets.

(Testimony of R. Foster Lamm)

Q But the bonds are, of course—

A (Interrupting): Makes the recovery out of the return of the charged-off assets.” (Reporter’s Transcript of Testimony of Proceedings on Trial, Line 17 on Page 82 to Line 6 on Page 83, inclusive.)

“Q Now, you say that it was one of the customary methods of repairing impaired capital for anyone interested in the bank, like stockholders or directors or officers. buying bad assets?

A That is correct.

Q Yes. Now, in your experience as a bank examiner, commencing with 1921 and ending in 1930, I take it, at least with reference to this bank—

A '31, I think.

Q —'31, did it ever come to your attention that the capital, the impaired capital of a national bank was ever repaired by any such method as the method contemplated by this arrangement, namely, buying the depreciated bond account?

A Yes.

Q In what banks?

A First National Bank of Huntington Beach.

Q Was that within your jurisdiction?

A Yes, sir.

Q Who suggested that to that national bank?

A I think I did.

Q You did. Now, isn't it a fact, Mr. Lamm, that this is your own idea, and whatever merit or demerit attaches to it as a formula for repairing the impaired capital of a bank is your own?

A I think maybe I claim it.

(Testimony of R. Foster Lamm)

Q You would claim it. Do you know whether or not as a matter of policy of the Treasury Department that was one of the recognized methods?

MR. MONTGOMERY: I object to that as calling for a conclusion of the witness.

THE COURT: No. He can state whether he has ever had the approval of the department in his written reports as to any such plan.

Q BY MR. DOCKWEILER: Yes. Using the Judge's words in my question, what would your answer be?

A Well, I would have to say that they did not disapprove it when it worked.

Q They did not disapprove it. Did you ever specifically set it before them and ask for their approval or disapproval?

A Only as an accomplished fact.

Q Only as an accomplished fact, and that with reference to what?

A First National Bank of Huntington Beach.

Q Yes. And when was that submitted to the department?

A Oh—

Q In what year?

A Probably 1929, I imagine.

Q 1929. Did you ever have an answer from the Comptroller's office as to that being a proper method of repairing impaired capital?

A I never.

(Testimony of R. Foster Lamm)

Q No answer one way or the other?

A I do not remember that there was." (Reporter's Transcript of Testimony of Proceedings on Trial, Line 6 on Page 80 to Line 10 on Page 82, inclusive.)

II

Following said meeting and discussion with said Bank Examiner, R. Foster Lamm, Plaintiffs' Exhibit 4 hereinafter set forth in full, was signed and the respective amounts of money were paid by such signer as follows:

Wm. A. Dolan, Cash	\$32,500
F. H. Dolan, Cash	32,500
Ben Baxter, Cash	1,750
L. J. Kelly, Note of 10/10/32	4,900
Ernest F. Ganahl, Note of 10/7/32	1,750
Frank Baum, Note of 9/19/32	5,250
J. W. Brunsworth, Note of 10/6/32	5,250
S. James Tuffree, Note of 9/29/32	3,500
Ed Kelly, Note of 10/7/32	9,000
Fred & Sophia Rimpau, Cash	3,675
F. A. Yungbluth, Note of 11/32/32	1,750
J. K. Day, Note of 10/8/32	875
Minnie Baxter, Note of 7/8/32	3,000
Cash	850
M. Del Giorgio, Note of 12/14/32	875
Jennie Pomeroy, Cash	2,000
Note of 7/11/32	1,500
D. A. Woodward, Note of 11/22/32	1,225
J. W. Truxaw, Note of 10/28/32	1,750
J. J. Dwyer	1,750

(Testimony of William A. Dolan)

That

WILLIAM A. DOLAN,

a witness on behalf of plaintiffs testified in part as follows, quote:

“Q Did you talk to any other bank examiner before purchasing this depreciation, and explain the situation to him?

A No; I did not— I think that later on, after the money had been put up, Mr. Waldron was the successor of Mr. Lamm in our territory, and I told him what we had done; and the records show that Mr. Waldron approved our action. That was the understanding of the way the information was given to the Comptroller’s office.” (Reporter’s Transcript of Testimony of Proceedings on Trial, Line 23 on Page 60 to Line 5 on Page 61, inclusive.)

—————...—————

“Q BY MR. MONTGOMERY: What did you tell Mr. Waldron the plan was?

A I told him that Mr. Lamm had suggested that the directors and some of the stockholders purchase the bond depreciation and if the bonds appreciated, why, we were to be able to get our money back; and Mr. Waldron seemed to think that that was O. K. He said—

Q Not what he seemed to think. What did he say?

A He said he did not see why it would not work out all right; and he said to go ahead, and on the—I think it was June the 22nd, I wrote the Comptroller of the Currency to that effect.” (Reporter’s Transcript of Testimony of Proceedings on Trial, Lines 7 to 18 inclusive, on Page 64.)

(Testimony of William A. Dolan)

EXCEPTION No. 4

On cross-examination, counsel for the defendant was permitted to inquire into and introduce evidence of a transaction which took place a year prior to the transaction out of which the cause of action in this case arose. On Page 69 of Reporter's Transcript of Testimony and Proceedings on Trial, Lines 7 to 24, inclusive, we find the objection of counsel for the plaintiffs overruled and exception noted as follows:

"MR. MONTGOMERY: I would like to have counsel state what the purpose of this examination is and what item we are going into, because this is long prior to the transaction in question.

MR. DOCKWEILER: Well, showing, your Honor, that the gentleman knew long prior—a year prior, from the records themselves, that an impaired capital could only be corrected in one of several ways specifically set forth in this very letter that I am about to introduce.

MR. MONTGOMERY: This party is not a plaintiff.

MR. DOCKWEILER: But he has testified on behalf of the contributors, or whatever you wish to call the gentlemen who signed this agreement, and he says that that was their understanding.

THE COURT: That letter is addressed to whom?

MR. DOCKWEILER: "Board of Directors, Anaheim National Bank."

THE COURT: Objection overruled and exception noted."

(Testimony of William A. Dolan)

EXCEPTION No. 5

Again on Pages 71 and 72 of Reporter's Transcript of Testimony and Proceedings on Trial, we find two letters under date of July 2, 1930 and July 17, 1930, introduced into evidence by counsel for the defendant to which counsel for the plaintiffs objected but the Court saved the objections and noted an exception:

"MR. DOCKWEILER: At this time defendant introduces as defendants' Exhibit—

THE CLERK: F.

MR. DOCKWEILER: —F, a copy of this same letter of July 2, 1930, addressed by E. H. Gough, Deputy Comptroller, to Board of Directors, Anaheim First National Bank; and I will ask opposing counsel whether it will be agreeable to introduce the copy.

MR. MONTGOMERY: It is agreeable to introduce the copy, and we will make the objection that it relates to an entirely different transaction and has no bearing upon the issues of this case, immaterial and irrelevant.

THE COURT: The objection will be saved and exception noted, and we will see what we make out of it.

MR. DOCKWEILER: Defendant introduces as Defendants' Exhibit G the reply of Mr. W. A. Dolan, as president of the bank, to E. H. Gough, Deputy Comptroller, under date of July 17, 1930; and I will ask opposing counsel whether it will be stipulated that the copy may be introduced in evidence.

MR. MONTGOMERY: Yes; on the same basis as the other letter. Now, Mr. Lamm is here. May we interrupt the proceedings and call Mr. Lamm?" (Reporter's Transcript of Testimony and Proceedings on Trial, Lines 17 on Page 71 to Line 13 on Page 72, inclusive.)

(Testimony of William A. Dolan)

In relation to the two letters just mentioned, the resolution which was referred to in one of the letters, was read into the evidence. It appears on Page 87 of Reporter's Transcript of Testimony and Proceedings on Trial, Lines 20 to 26, inclusive, as follows:

“‘It was moved by J. J. Dwyer, and seconded by Fred C. Rimpau and carried, that a reserve fund be created by voluntary contribution of stockholders to offset depreciation in bond account, and that stockholders contributing will be reimbursed from said reserve fund which will be built up by appreciation in the bond account or by any other earnings in the bank.’”

The above resolution was passed at a meeting of the Board of Directors on the 29th day of May, 1930.

In relation to a former transaction the witness testified that the stockholders and directors, who had in 1930 contributed the sum of \$30,000 to take up the depreciation in the bond account, and in fact they had their contributions refunded to them out of the amounts paid into the bank in the transaction involved in this case. Quoting from Pages 101 and 102 of the Reporter's Transcript of Testimony and Proceedings on Trial, Lines 13 to 26 on Page 101, Line 1 on Page 102, inclusive:

“Q This \$30,000 in notes that was put up, that whole transaction was cancelled, wasn't it?

A Yes.

Q And the notes were taken up out of the proceeds of this second—

A Purchase.

Q Purchase?

A Yes.

(Testimony of S. James Tuffree)

Q And was any money put up on the \$30,000 deal? Did Mr. Kelly put up some which was repaid to him?

A No; that was just notes, all notes.

Q All notes?

A Yes.

Q And they were cancelled?

A Yes."

—...—

EXCEPTION No. 6

S. JAMES TUFFREE,

a witness for plaintiffs testified in part as follows, on cross-examination:

"Q Yes. Well, I will refer you to the minutes of the meeting of September 17, 1931, a little over a year later. For the purposes of refreshing your recollection, Mr. Tuffree, I expose to you what purports to be the minutes of the meeting of the directors of September 17, 1931, and I will ask you whether or not you recall having been present at that meeting?

MR. MONTGOMERY: I object to that as subsequent to the transaction in question, and unless it amounts to an interpretation of what had previously taken place it is immaterial, irrelevant and incompetent.

MR. DOCKWEILER: That is what we claim it to be, a matter of interpretation, as it was a matter of continuous correspondence between the Comptroller and—

THE COURT: We will hear it and the objection may be overruled and exception noted." (Reporter's

(Testimony of S. James Tuffree)

Transcript of Testimony and Proceedings on Trial, Lines 18 to 26 inclusive on Page 28 and from Lines 1 to 8 inclusive on Page 29.)

Again on Pages 33 and 34 of Reporter's Transcript of Testimony and Proceedings on Trial, we find this witness cross-examined as to a letter dated August 20, 1931, addressed to the Board of Directors of the Anaheim First National Bank by the Deputy Comptroller, E. H. Gough. Counsel for the plaintiffs made the objection to the admission and line of cross questioning on the ground that this letter was written subsequent to the time when the transaction out of which the cause of action in this case arose took place. We quote from Line 13 to Line 26, inclusive, on Page 33, and from Line 1 to Line 16½ on Page 34 of Reporter's Transcript of Testimony and Proceedings on Trial:

"I would like to read those two paragraphs in order to ask you some questions. Reading from the August 20th letter of the Deputy Comptroller Gough to the Board of Directors of the Anaheim First National Bank.

'A Capital impairment of \$94,400.53 was shown by National Bank Examiner W. J. Waldron in this report of an examination of your bank completed June 24, which it is understood has been provided for by voluntary and unconditional contributions of directors and shareholders. The contributions up until July 17, 1931, are reported to have amounted to \$115,650, of which \$73,775 was cash, and \$41,875 in the form of fourteen ninety-day notes. *They* were still eighteen stockholders to interview and obtain contributions from.'

(Testimony of S. James Tuffree)

Then the fourth paragraph of the same letter :

‘Although you have been previously advised in this regard this office wishes to bring to your attention again at this time the fact that contributions made to restore capital should be made unconditionally and without the expectation of reimbursement. Please advise in your reply to this letter that you have the correct understanding in this regard.’

Now, Mr. Tuffree, was—

MR. MONTGOMERY: In order to keep my record straight, may it be understood that my objection runs to this letter as being subsequent?

THE COURT: Yes.

MR. MONTGOMERY: And not binding upon us?

THE COURT: It will be so agreed and exception will be carried in the record in your favor.”

—...—

EXCEPTION No. 7

Again on Page 40 of Reporter’s Transcript of Testimony and Proceedings on Trial, the following colloquy is found. Quote:

“MR. DOCKWEILER: At this time we should like to introduce as Defendant’s Exhibit C the minutes of the meeting of the Board of Directors held November 19, 1931, in the form of a copy from the minute book.

MR. MONTGOMERY: We have no objection to the copy, but we make the same objection that it is subse-

(Testimony of S. James Tuffree)

quent and is irrelevant, incompetent and immaterial, an attempt to change the contract, or, rather, it is an item of evidence attempting to change the contract that actually was made.

THE COURT: I will let the exception show and the objection be presently overruled. I expect to hear you on the argument on all those questions, nevertheless.” (Reporter’s Transcript of Testimony and Proceedings on Trial, Lines 12 to 23, inclusive, on Page 40.)

—————...—————

EXCEPTION No. 8

On Pages 43 and 44 of Reporter’s Transcript of Testimony and Proceedings on Trial, the following colloquy is found:

“MR. DOCKWEILER: At this time for the purposes of the record, having already introduced the copy of the minutes, we offer as Defendant’s Exhibit 4 a copy of the letter dated October 30, 1931, addressed by Deputy Comptroller Gough to Board of Directors of Anaheim First National Bank.

THE COURT: Subject to the same objection and exception.

MR. MONTGOMERY: Yes, your Honor.” (Reporter’s Transcript of Testimony and Proceedings on Trial, Lines 18 to 24, inclusive, on Page 43.)

—————...—————

(Testimony of S. James Tuffree)

EXCEPTION No. 9

On Page 45 of Reporter's Transcript of Testimony and Proceedings on Trial, the following testimony and evidence is found:

"Q Having been advised by the Comptroller's office of what their position was on repairing of impaired capital, did you ever do anything to attempt to advise the Comptroller's office that you had bought what you called the bond depreciation and you expected to get reimbursement of your contribution or payment, whatever you wish to call it, from appreciation in the bond account if appreciation ever occurred?

MR. MONTGOMERY: Well, I object to that as immaterial, irrelevant and incompetent, and also as already having been answered. We have a letter here from the president stating what the basis of contributions was, or, rather, of the purchase.

MR. DOCKWEILER: Your Honor, I have in mind that this gentleman was in a special fiduciary capacity; he was a director of a national bank. As a director he was not dealing at arm's length with the Comptroller but as a director of a national bank. He was under the same obligation that any other director or officer of the bank would be, having the destinies of the bank in its hands and being in relationship constantly with the bank examiner and with the Comptroller's office, to make clear disclosure to the Comptroller of matters which vitally affected the capital of the bank. And for this reason, may it please the court, where a loan is made of money to the bank with a string attached to it, or a condition

(Testimony of S. James Tuffree)

of any sort, we all know that that is a liability of the bank which must ultimately be paid. It is only in the event that it is a voluntary contribution that it meets the requirements of the Comptroller's office that the capital be so much and unimpaired and maintained at that same unimpairment. If these are loans or advancements or obligations of the bank, you see, they do not meet the requirement that there be a source, an aggregate, a reservoir of money called "the capital" which is available to pay creditors doing business with the bank. And our position is that every director is in such a fiduciary capacity that he must not permit the Comptroller's office, if the Comptroller asks a specific question, sets forth conditions and so on—must not permit him or lull him into a sense of security that the bank has been repaired as to impaired capital when, in point of fact, the Comptroller would consider that it had not been. And that is why I asked that question.

MR. MONTGOMERY: The president has already advised the Comptroller on September 8th the following stockholders purchased the depreciation, with the understanding that the bonds were to be held or exchanged with a view of the same liquidating the amounts subscribed.

MR. DOCKWEILER: Yes.

MR. MONTGOMERY: I do not think it is incumbent upon us to go any further. We have already told what our position was.

MR. DOCKWEILER: And then you have that subsequent reply, stating clearly what the Comptroller's office would regard as only a sufficient and adequate—what they would call "contribution" to repair the impaired capital;

(Testimony of William A. Dolan)

and I am asking now whether—we get along into November—whether he ever did anything to make it clear that these gentlemen were not making a voluntary contribution without expectation of reimbursement.

MR. CHIPKIN: May I add something there? This gentleman is a party plaintiff, and certainly, he, himself, must have shown that he requested the money back or that he did not approve that conduct of the directors in not calling attention of the Comptroller to the fact that he did not approve of that kind of an agreement.

THE COURT: I will allow him to answer, with the exception noted to the ruling.” (Reporter’s Transcript of Testimony and Proceedings on Trial, from Line 17 on page 45 to Line 5 on Page 48, inclusive.)

III

Said

WILLIAM A. DOLAN,

President of Anaheim First National Bank, further testified as follows: That the various amounts alleged to have been loaned to the bank as set forth in the original complaint in this action were in fact paid in, and that no part thereof had ever been repaid to any of the plaintiffs and appellants herein. Quote:

“Q BY MR. DOCKWEILER: Having in mind these letters received by the board of directors, addressed to the board of directors of the bank, did it ever occur to you that the Comptroller of the Currency at Washington was insisting that whatever was gathered together in the way of additional capital for the repairment of the im-

(Testimony of William A. Dolan)

paired capital should be free, untrammelled, unconditional, and wasn't that a matter of discussion between you men?

A It might have been up for discussion, but we had already made this loan to the bank in order to take care of that depreciation, and the discussion in regard to it in view of these letters was nothing more or less than telling us that after we had already made that loan in good faith—' (Reporter's Transcript of Testimony and Proceedings on Trial, Lines 9 to 21, inclusive, on Page 42.)

Plaintiff's Exhibits I, II and IV, follows:

"Plaintiffs' Exhibit 1

"Minute Record

Meeting Held on the 18 day of June, 1931.

The regular monthly meeting of the Board of Directors of the Anaheim First National Bank was held on the above date, President Wm. A. Dolan, presiding:

Directors present were:

Wm. A. Dolan	F. H. Dolan
J. H. Brunworth	L. J. Kelly
Ed Kelly	Frank Baum
F. G. Rimpau	Ben Baxter
S. James Tuffree	Ernest F. Ganahl

Minutes of the last regular meeting were read and approved.

Loans from No. 6008 to 6112 were read and on motion by S. James Tuffree, seconded by J. W. Brunworth, were approved.

(Testimony of William A. Dolan)

On motion by S. James Tuffree, seconded by L. J. Kelly, expense items for the month ending with the date of this meeting, were approved.

It was moved by Ben Baxter, seconded by F. H. Dolan, and carried that a committee be selected to collect \$175.00 per share from stockholders, to be used to purchase depreciation in bond account. A total of 577 shares were presented by directors present, all of whom agreed to pay at the above rate.

The President appoints a new bond committee, consisting of:

S. James Tuffree
Ernest F. Ganahl
Ben Baxter
Wm. A. Dolan

Rose L. Phegley
Secretary

Wm. A. Dolan
President"

Plaintiffs' Exhibit 2

"Minute Record Meeting held on the 17 day of July, 1931.

The regular monthly meeting *on* the Board of Directors of the Anaheim First National Bank, a national banking association, was held on the above date, President Wm. A. Dolan, presiding:

Wm. A. Dolan	L. J. Kelly
Ed. Kelly	J. H. Brunworth
Frank Baum	F. G. Fimpau
S. James Tuffree	

Minutes of the last regular meeting was read and approved, as were likewise the minutes of the special meeting of June 30, 1931.

(Testimony of William A. Dolan)

Loans from No. 6113 to 6199 were read and on motion by S. James Tuffree, seconded by L. J. Kelly, were approved.

The following resolution was offered by S. James Tuffree, seconded by J. M. Brunworth, and carried:

Resolved that the \$115,650 which has been paid in by stockholders at the rate of \$175.00 per share for the purchase of bond depreciation, and the \$25,000 now held on books of the bank in reserve account, be applied as follows:

Take up five notes of \$6,000.00 each formerly placed in bank's assets by certain stockholders on account of bond depreciation.

The balance of said amount to be applied directly against the bond account of this bank on account of estimated depreciation, which will reduce the present total of bond account by \$110,650. Be it further resolved that as further payments be received from stockholders on account of purchase of bond depreciation, that such sums shall be applied on bond account as above specified.

Adjournment,

Ross L. Phegley
Secretary

Wm. A. Dolan
President"

Plaintiffs' Exhibit 4

"In compliance with action of the Board of Directors taken at a meeting held June 18, 1931, recommending that stockholders pay into a fund for the purchase of bond depreciation a sum equal to \$175.00 for each share owned. the undersigned hereby subscribe to such fund in the amount set opposite our names.

(Testimony of William A. Dolan)

It is the intention that interest received from bonds equalling the amount of depreciation purchased be set aside for the use of the undersigned. An appraisal of the bond lease shall be made each six months and should a decrease in the depreciation be shown, the amount shall be divided pro rata among the stockholders purchasing depreciation of bond account.

Wm. A. Dolan	Pd.	\$32,500	
F. A. Dolan	Pd.	32,500	
Ben Baxter <u>6-4-31</u>	Pd.	1,750	
8500 P. E.			Date of Note
L. J. Kelly	Pd.	4,900	N. 10/10/32
Ernest F. Ganahl	Pd.	1,750	N. 10/ 7/32
Frank Baum	Pd.	5,250	N. 9/19/32
J. H. Brunworth		5,250	N. 10/ 6/32
		N 3 M	
S. James Tuffree	Pd.	3,500	9/29/32
Ed. Kelly		9,000	N. 10/ 7/32
Fred & Sophia Rimpau	Pd.	3,675	
F. A. Yungbluth		1,750	N. 11/32/32
J. K. Day	Pd.	875	N. 10/ 8/32
		Pd. 875-3000	
Minnie Baxter	Pd.	3,875	7/ 8/32
M. Del Giorgio	Pd.	875	N. 12/14/32
		Pd. 2,000	
Jennie Pomeroy	Pd.	3,500	7/11/32
		1,500	
D. A. Woodward (M B)		1,225	N. 11/22/32
J. W. Truxaw 10-28-32		1,750	
J. J. Dwyer		1,750	Pd."

(Testimony of William A. Dolan)

showed the value of the bonds listed in Defendant's Exhibit H at the time they were taken over by the Receiver and the prices obtained for those sold by the Receiver. That such bonds have all been sold [H I D]

That the receiver, J. V. Hogan, had sold almost all of the bonds wherein the depreciation was purchased by the directors and stockholders of the Anaheim First National Bank. On Page 155, lines 16½ to Line 21½, inclusive, of the Reporter's Transcript of Testimony and Proceedings on Trial, we quote an objection which was overruled by the Court and exception noted, as follows:

"MR. MONTGOMERY: I object to that question as immaterial and irrelevant and indefinite, because an appreciation might exist in the market value of the bonds which is not reflected in what the receiver got for them. If I understand the account correctly, he is asking for the appreciation that the receiver got or that the bank got in making the sale. (Reporter's Transcript of Testimony and Proceedings on Trial, Page 155, Lines 16½ to 21½ inclusive.)

THE COURT: I will let him state it and exception noted. (Reporter's Transcript of Testimony and Proceedings on Trial, Page 156, line 1.)

EXCEPTION No. 11

Again on Page 156, Lines 24½ and 25½ and Page 157, Lines 1 to 3½ of Reporter's Transcript of Testimony and Proceedings on Trial, we find:

"Q \$655.62. Have you also a total of the depreciations, the aggregate of depreciations on sales? (Reporter's Transcript of Testimony and Proceedings on Trial, Lines 24½ and 25½, at Page 156.)

(Testimony of W. J. Waldron)

MR. MONTGOMERY: Well, I would object to that on the ground it is immaterial, irrelevant and incompetent.

THE COURT: I will allow him to state and exception shown." (Reporter's Transcript of Testimony and Proceedings on Trial, Page 157, Lines 1 to 3½, inclusive.)

IV

W. J. WALDRON,

a witness on behalf of defendant, testified in part as follows:

That he was the national bank examiner in the territory in which the Anaheim First National Bank was situated from late fall of 1930 until the present time. It was further the testimony of the said W. J. Waldron that the which Dolan told him was [H I D] method for the purchase of bond depreciation suggested to the directors of the Anaheim First National Bank by R. Foster Lamm, Mr. Waldron's predecessor, had been discussed with the witness by W. A. Dolan and Ben Baxter about the month of June, 1931. We quote from lines 15 to 26, inclusive on Page 169, and Lines 1 to 3½, inclusive on Page 170, of Reporter's Transcript of Testimony and Proceedings on Trial, as follows:

"Q Now, when did you first have a discussion with him on that subject, as nearly as you can fix it?

A Well, though I don't particularly recall it, I think there must have been some discussion in my prior examination because a program had been originated prior to

(Testimony of Roy De La Mare)

that examination along that line, and my report of December, 1930, reflected the program that had been put into effect at a prior date.

Q The program already put into effect?

A Already put into effect.

Q And what program was that?

A That was the raising of some \$30,000 in the spring or summer of 1930, represented by notes put in the bank's files.

Q And that was to repair impaired capital?

A Yes."

V

That

ROY De LA MARE,

a witness for defendant, also testified in part, as follows:

"* * * did the bank ever keep a record and an accounting of the depreciated bonds, or any group of depreciated bonds after June 24, 1931?"

MR. MONTGOMERY: I object to that as immaterial.

THE COURT: He may state what the records show.

Q BY MR. DOCKWEILER: What do the records show, if you have knowledge of the records?

(Testimony of Roy De La Mare)

A There is no record that we have found in the bank—that I have found in the records of the bank that would so indicate that there was any segregation made by anyone. The bond account was kept just the same before June 24, 1931, as it was afterwards.

Q Were any lists made each six months or at other stated periods thereafter?

A I found no record to that effect.

MR. MONTGOMERY: I object to that as immaterial.

Q BY MR. DOCKWEILER: Now, was there any liability set up in the bank records—pardon me, I should not ask another question until there is a ruling on this.

THE COURT: He has answered. Let it remain.

MR. DOCKWEILER: I would say, your Honor, in defense of the question that it is predicated upon language

—————...—————

EXCEPTION No 10

ROY De LA MARE,

who kept the records of the Receiver of said Bank, J. V. HOGAN, testified in part as follows:

That the books of the Anaheim First National Bank used in this June 24th arrangement.

MR. MONTGOMERY: I may say in support of my objection that if the bank violated its agreement that does not relieve the receiver or the bank of responsibility.

(Testimony of Roy De La Mare)

THE COURT: Let it stand and exception shown. It has been answered." (Lines 9 to 26 inclusive on Page 175 and Lines 1 to 10, inclusive, on Page 176, of Reporter's Transcript of Testimony and Proceedings on Trial.)

It was further testified by this witness that plaintiffs' Exhibit IV, which shows was in the files of the bank when the sole management of said bank was taken over by the Receiver, Mr. J. V. Hogan.

VI.

That defendant's Exhibit H is as follows:

VII

That Minnie Palmer, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY and F. A. YUNGBLUTH were stockholders and not directors of said bank and that they at no time attended any of the meetings of said bank.

VIII

On August 11, 1938, the Court signed an order extending time within which to serve and file Bill of Exceptions and Extending term as follows:

“IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

L. J. KELLY, F. H. DOLAN, BEN)	
BAXTER, S. JAMES TUFFREE,)	
ED KELLY, F. A. YUNGBLUTH,)	
MINNIE PALMER, formerly)	
known as MINNIE BAXTER, M.)	
DEL GIORGIO, JENNIE POM-)	
EROY, J. W. TRUXAW, J. J.)	
DWYER, M. E. DAY, ERNEST)	NO. 7522-J
F. GANAHL, FRANK BAUM and)	(In Law)
JOSEPHINE BAUM, husband and)	ORDER
wife,)	EXTENDING
	) TIME WITHIN
Plaintiffs and Appellants,)	WHICH TO
	) SERVE AND
vs.)	FILE BILL OF
	) EXCEPTIONS
ANAHEIM FIRST NATIONAL)	AND EXTEND-
BANK, a national banking associa-)	ING TERM.
tion, JOHN DOE COMPANY, a)	
corporation, JOHN DOE ONE,)	
JOHN DOE TWO, and JOHN)	
DOE THREE,)	
)
Defendants and Appellees.)	
)

On motion of EDW. C. PURPUS, attorney for plaintiffs herein except Frank Baum and Josephine Baum, husband and wife, and Ernest F. Ganahl, and good cause appearing therefor:

IT IS ORDERED that the time within which the plaintiffs herein may serve and file their Proposed Bill of Exceptions is hereby extended to and including August 31, 1938.

IT IS FURTHER ORDERED that for the purpose of making and filing the Bill of Exceptions herein and having same settled and allowed and the making of any and all Motions necessary to be made within the term in which the Motion for New Trial herein was denied, the term of this Court is hereby extended to and including August, 31, 1938.

Dated August 11, 1938.

WM. P. JAMES
United States District Judge

On August 16, 1938, the Court signed an order Enlarging Time within which Plaintiffs may file the Record and Docket the Cause in the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

“IN UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

L. J. KELLY, F. H. DOLAN, BEN)
 BAXTER, S. JAMES TUFFREE, ED)
 KELLY, F. A. YUNGBLUTH, MIN-)
 NIE PALMER, formerly known as)
 MINNIE BAXTER, M. DEL GIOR-)
 GIO, JENNIE POMEROY, J. W.)
 TRUXAW, J. J. DWYER, M. E. DAY,)
 ERNEST F. GANAHL, FRANK)
 BAUM and JOSEPHINE BAUM, hus-)
 band and wife,)

Plaintiffs and Appellants,)

NO. 7522-J
(In Law)

vs.)

ANAHEIM FIRST NATIONAL)
 BANK, a national banking association,)
 JOHN DOE COMPANY, a corporation,)
 JOHN DOE ONE, JOHN DOE TWO,)
 and JOHN DOE THREE,)

Defendants and Appellees.)

ORDER ENLARGING TIME WITHIN WHICH
PLAINTIFFS MAY FILE THE RECORD AND
DOCKET THE CAUSE IN THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT

Good cause being shown therefor, IT IS ORDERED
that the time of the plaintiffs to file the Record and Docket

cause in the United States Circuit Court of Appeals, in and for the Ninth Circuit, at San Francisco, California, may be extended to and including the 30th day of September, 1938.

Dated August 16, 1938.

WM. P. JAMES
United States District Judge"

On August 22, 1938, the Court signed an Order Enlarging Time within which to obtain Reporter's Transcript and serve and file additions to and changes in said Proposed Bill of Exceptions, as follows:

“IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)		
BAXTER, S. JAMES TUFFREE.)		
ED KELLY, F. A. YUNGBLUTH,)		
MINNIE PALMER, formerly)		
known as MINNIE BAXTER, M.)		
DEL GIORGIO, JENNIE POM-)		
EROY, J. W. TRUXAW, J. J.)		
DWYER, M. E. DAY, ERNEST)		
F. GANAHL, FRANK BAUM and)		
JOSEPHINE BAUM, husband and)		
wife,)		NO. 7522-J
)		(In Law)
Plaintiffs and Appellants.)		STIPULATION
)		AND ORDER
vs.)		
)		
ANAHEIM FIRST NATIONAL)		
BANK, a national banking associa-)		
tion, JOHN DOE COMPANY, a)		
corporation, et al.,)		
)		
Defendants and Appellees.)		
)		

WHEREAS, a Reporter's Transcript of all the evidence taken at the trial is advisable for the preparation of a proper Bill of Exceptions on appeal herein; and

WHEREAS, appellants desire to obtain such a transcript of the evidence and to submit changes in the Pro-

posed Bill of Exceptions heretofore filed herein on the 13th day of August, 1938; and

WHEREAS, some delay will unavoidable be encountered in obtaining said transcript and submitting said changes;

NOW THEREFORE, IT IS STIPULATED AND AGREED by and between the parties hereto, through their respective counsel, as follows:

That appellants shall have additional time, to and including the 6th day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions heretofore filed herein, and that appellee shall have additional time to and including the 16th day of September, 1938, within which to serve and file amendments to Appellants' said Proposed Bill of Exceptions and any additions to or changes therein; and

That the term of Court, expiring the 31st day of August, 1938, under order heretofore obtain herein, may be extended to and including the 29th day of September, 1938.

Dated this 22nd day of August, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for Appellants

DOCKWEILER & DOCKWEILER and
BENJAMIN CHIPKIN,

By Henry I. Dockweiler

Attorneys for Appellee

ORDER

Upon reading the above stipulation and good cause appearing therefor, it is hereby ordered that appellants shall have additional time, to and including the 6th day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions *heretofor* filed herein, and that appellee shall have additional time to and including the 16th day of September, 1938, within which to serve and file amendments to appellants' said Proposed Bill of Exceptions and any additions to or changes therein; and

It is further ORDERED that the term of Court, expiring the 31st day of August, 1938, under order heretofore obtained herein, shall be and it is hereby extended to and including the 29th day of September, 1938.

WM. P. JAMES

United States District Judge"

On September 2nd, 1938, the Court signed an Order Enlarging Time within which to obtain Reporter's Transcript and serve and file additions to and changes in said Proposed Bill of Exceptions and extending the term of court to the 29th day of October, 1938, as follows:

“IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)
BAXTER, S. JAMES TUFFREE,)
ED KELLY, F. A. YUNGBLUTH,)
MINNIE PALMER, formerly)
known as MINNIE BAXTER, M.)
DEL GIORGIO, JENNIE POM-)
EROY, J. W. TRUXAW, J. J.)
DWYER, M. E. DAY, ERNEST)
F. GANAHL, FRANK BAUM and)
JOSEPHINÉ BAUM, husband and)
wife,)

Plaintiffs and Appellants,)

vs.)

ANAHEIM FIRST NATIONAL)
BANK, a national banking associa-)
tion, JOHN DOE COMPANY, a)
corporation, et al.,)

Defendants and Appellees.)

NO. 7522-J

(In Law)

STIPULATION
AND ORDER

WHEREAS, a Reporter's Transcript of all the evidence taken at the trial is advisable for the preparation of a proper Bill of Exceptions on Appeal herein; and

WHEREAS, appellants desire to obtain such a transcript of the evidence and to submit changes in the Pro-

posed Bill of Exceptions heretofore filed herein on the 13th day of August, 1938; and

WHEREAS, some delay will unavoidably be encountered in obtaining said transcript and submitting said changes;

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and between the parties hereto, through their respective counsel, as follows:

That appellants shall have additional time, to and including the 13th day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions heretofore filed herein, and that appellee shall have additional time to and including the 23rd day of September, 1938, within which to serve and file amendments to appellants' said Proposed Bill of Exceptions and any additions to or changes therein; and

That the term of Court, expiring the 29th day of September, 1938, under order heretofore obtained herein, may be extended to and including the 29th day of October, 1938.

Dated this 2nd day of September, 1938.

EDW. C. PURPUS

By

Attorney for Appellants

DOCKWEILER & DOCKWEILER and
BENJAMIN CHIPKIN,

By

Attorney for appellee"

ORDER

Upon reading the above stipulation and good cause appearing therefor, it is hereby ORDERED that appellants shall have additional time, to and including the 13th day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions heretofore filed herein, and that appellee shall have additional time to and including the 23rd day of September, 1938, within which to serve and file amendments to appellants' said Proposed Bill of Exceptions and any additions to or changes therein; and

It is further ORDERED that the term of Court, expiring the 29th day of September, 1938, under order heretofore obtained herein, shall be and it is hereby extended to and including the 29th day of October, 1938, and it is further ORDERED that the date of the appellants to file the record and docket cause in the United States Circuit Court of Appeals in and for the Ninth Circuit at San Francisco, California, may be extended to and including the 29th day of October, 1938.

WM. P. JAMES

United States District Judge for
the Southern District of California"

On September 8th, 1938, the Court signed an order Enlarging Time within which to obtain Reporter's Transcript and serve and file additions to and changes in said Proposed Bill of Exceptions, as follows:

“IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)
 BAXTER, S. JAMES TUFFREE,)
 ED KELLY, F. A. YUNGBLUTH,)
 MINNIE PALMER, formerly)
 known as MINNIE BAXTER, M.)
 DEL GIORGIO, JENNIE POM-)
 EROY, J. W. TRUXAW, J. J.)
 DWYER, M. E. DAY, ERNEST)
 F. GANAHL, FRANK BAUM and)
 JOSEPHINE BAUM, husband and)
 wife,)

Plaintiffs and Appellants,)

vs.)

ANAHEIM FIRST NATIONAL)
 BANK, a national banking associa-)
 tion, JOHN DOE COMPANY, a)
 corporation, et al.,)

Defendants and Appellees.)

NO. 7522-J

(In Law)

STIPULATION

AND ORDER

WHEREAS, a Reporter’s Transcript of all the evidence taken at the trial is advisable for the preparation of a proper Bill of Exceptions on appeal herein; and

WHEREAS, appellants desire to obtain such a transcript of the evidence and to submit changes in the Proposed Bill of Exceptions heretofore filed herein on the 13th day of August, 1938; and

WHEREAS, some delay will unavoidably be encountered in obtaining said transcript and submitting said changes;

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and between the parties hereto, through their respective counsel, as follows:

That appellants shall have additional time, to and including the 23rd day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions heretofore filed herein, and that Appellee shall have additional time to and including the 3rd day of October, 1938, within which to serve and file amendments to appellants' said Proposed Bill of Exceptions and any additions to or changes therein;

Dated: This 8th day of September, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for Appellants

DOCKWEILER & DOCKWEILER and
BENJAMIN CHIPKIN,

By Henry I. Dockweiler

Attorneys for Appellee

ORDER

Upon reading the above stipulation and good cause appearing therefor, it is hereby ORDERED that appellants shall have additional time, to and including the 23rd day of September, 1938, within which to obtain said transcript and serve and file additions to and changes in said Proposed Bill of Exceptions heretofore filed herein, and that appellee shall have additional time to and including the 3rd day of October, 1938, within which to serve and file amendments to appellants' said Proposed Bill of Exceptions and any additions to or changes therein.

WM. P. JAMES

United States District Judge for
the Southern District of California"

Inasmuch as the rulings and exceptions specified in the foregoing Bill of Exceptions do not appear in the record of the said cause, and are correct in all respects, I, Wm. P. James, Judge of the said Court, who presided at the trial thereof, after due notice given to the plaintiffs herein have settled and signed the said Bill and have ordered the same to be made a part of the record on the 14 day of October, 1938, being within the judgment term as extended by Order of this Court, and shall be used by the parties, plaintiffs or defendants, upon any Appeal taken by either parties, plaintiffs or defendants, in the above-entitled case.

Wm P James

United States District Judge

ACKNOWLEDGMENT OF SERVICE

The undersigned, as attorneys for defendant and appellee ANAHEIM FIRST NATIONAL BANK, a national banking association, hereby admit service on them of the following document in the above-captioned case:

Proposed Bill of Exceptions.

Dated this 13th day of October, 1938.

DOCKWEILER & DOCKWEILER and
BENJAMIN CHIPKIN,

By Henry I. Dockweiler

Attorneys for defendant and appellee

Approved as to form but not as to content, under Rule 44. Dockweiler & Dockweiler, & Benj. Chipkin by Henry I. Dockweiler

[Endorsed]: Filed Oct 14 1938 R. S. Zimmerman,
Clerk. By L. B. Figg, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION

L. J. KELLY, F. H. DOLAN, BEN)	
BAXTER, S. JAMES TUFFREE,)	
ED KELLY, F. A. YUNGBLUTH,)	
MINNIE PALMER, formerly)	
known as MINNIE BAXTER, M.)	
DEL GIORGIO, JENNIE POM-)	
EROY, J. W. TRUXAW, J. J.)	
DWYER, M. E. DAY, ERNEST F.)	
GANAHL, FRANK BAUM and)	NO. 7522-J
JOSEPHINE BAUM, husband and)	(In Law)
wife,)	PETITION
Plaintiffs and Appellants,)	FOR APPEAL
vs.)	
ANAHEIM FIRST NATIONAL)	
BANK, a National Banking Associa-)	
tion, et al,)	
Defendants and Appellees.)	

Plaintiffs herein, except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects and relates to them, considering themselves aggrieved by that certain Minute Order in these proceedings made on the 10th day of January, 1938, wherein and whereby Judgment was rendered in favor of the defendants and against the plaintiffs herein, and that certain Minute Order made in these proceedings on the 13th day of May, 1938, wherein and whereby Plaintiffs' Motion for a New Trial of this matter

was denied, DOES HEREBY APPEAL from such Orders and Judgment, and each of them, to the United States Circuit Court of Appeals of the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed simultaneously herewith, and pray that this Appeal may be allowed; that a citation be issued direct to the defendants, commanding them to appear before the said United States Circuit Court of Appeals of the Ninth Circuit, doing and receiving what may appertain to justice to be done in the premises; and that a Transcript of the Records, Papers, Proceedings, Arguments, Orders, Judgment and Decrees, including the Judgment Roll upon which the aforesaid Orders and Judgments, and each of them, are based, duly authenticated. may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 25 day of July, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for Plaintiffs
and Appellants.

ORDER ALLOWING APPEAL

The foregoing Appeal is hereby allowed this 25 day of July, 1938; plaintiffs, the Petitioners herein to file cost bond in the sum of TWO HUNDRED AND FIFTY DOLLARS (\$250.00).

Wm. P. James,
United States District Judge

[Endorsed]: Filed Jul 25 1938 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

ASSIGNMENT OF ERRORS

NOW COMES, L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUSH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER, M. E. DAY and ERNEST F. GANAHL, plaintiffs and appellants herein, and file this, their Assignment of Errors, complaining that the honorable trial court in determining and ordering that Findings and Judgment be entered in favor of the defendants and against the plaintiffs erred as follows:

I

That the Minute Order of the Court determining and ordering that Findings and Judgment be entered in favor of the defendants, was not in accordance with the law and the facts of the case.

II

That the Minute Order of the Court denying the plaintiffs' Motion for New Trial was not in accordance with the law.

III

That the Court erred in Finding No. IV that the plaintiffs F. K. DAY and all of said plaintiffs except M. E. DAY and JOSEPHINE BAUM, together with other shareholders of said bank, or any of them, did not enter into an Agreement with said bank whereby the said other

shareholders of said bank and said F. K. DAY and all of the plaintiffs, except M. E. DAY and JOSEPHINE BAUM, or any of them, agreed to purchase from said bank said depreciation then existing in said bond account; and that it was not true that by the terms of any such agreement said bank agreed to pay from time to time to the aforesaid parties, or to any of them, any pro-rata decrease which might from time to time appear in said depreciation of said bond account; that said Finding No. IV is contrary to the evidence both oral and documentary, and is not in accordance with the law.

IV

That the Court erred in Finding No. V that it is not true that in any such agreement, as set forth in said complaint, or otherwise, the following persons respectively agreed to pay to said Bank the following, or any other, sums:

L. J. Kelly	\$ 4,900.00
F. H. Dolan	32,500.00
Ben Baxter	1,750.00
S. James Tuffree	3,500.00
Ed. Kelly	9,000.00
F. A. Yungbluth	1,700.00
Minnie Palmer (formerly known as Minnie Baxter)	3,850.00
M. Del Giorgio	875.00
Jennie Pomeroy	3,500.00
J. W. Truxaw	1,750.00
J. J. Dwyer	1,750.00
F. K. Day	875.00
Ernest F. Ganahl	1,750.00 and
Frank Baum	5,250.00;

and it is not true that pursuant to such agreement said persons, excepting Ernest F. Ganahl and Frank Baum, on or about July 17, 1931, paid to said Bank the sums hereinabove set opposite their respective names and it is not true that pursuant to any such agreement said Ernest F. Ganahl on or about July 17, 1931 executed his promissory note for \$1,750.00 to said Bank or that, pursuant to such agreement he made any payments of principal or interest on such a note; and it is not true that pursuant to any such agreement said Frank Baum executed his promissory note dated December 19, 1932, for \$5,250.00 to said Bank or that pursuant to such agreement be paid interest on said note, or that, pursuant to such agreement, plaintiffs Frank Baum and Josephine Baum on or about May 9, 1933 executed and delivered to said Bank a certain trust deed on the property described in the fourteenth count of the complaint on file herein; that the Court erred in Finding No. V that it is true that said payments were made and said notes and trust deed were executed and delivered by said persons as voluntary contributions to said Bank and said Bank was not and is not obligated under any such agreement or otherwise to repay said sums or any part thereof, and said Bank has not repaid the same or any part thereof; that said Finding is contrary to the evidence both oral and documentary and is not in accordance with the law.

V

That the Court erred in Finding No. VIII that it is not true that by reason of the appointment of said receiver and the liquidation of the assets of said Bank, including said bond account, or otherwise, there has been any failure of consideration, wholly or partially, for the respective payments hereinabove set forth as having been

made by said persons to said Bank; and it is not true that by reason of any matters or things set forth in plaintiffs' complaint said Bank has become and is now, or ever was, indebted to any of said persons above named or to any of the plaintiffs herein for or on account of any sums of money whatsoever, either as principal or interest, that said Finding is not in accordance with the law and is contrary to the evidence and facts of the case.

VI

That the Court erred in Finding No. X that it is true that none of said claims was a valid or proper claim against said Bank or in the matter of the receivership of said Bank; that said Finding is not in accordance with the law, nor with the evidence or facts of the case.

VII

That the Court erred in Finding No. XI that it is not true that within two years prior to the preparation of the complaint, on file herein, or within two years prior to the filing thereof, the persons hereinabove in Finding No. V named loaned respectively to said Bank the sums respectively set after their names in said Finding No. V; and it is not true that said Bank received said respective sums, or any of said sums or any part thereof, for the use and benefit, or use or benefit, respectively of said persons, or any of said persons, whose names are set forth in said Finding No. V; and it is not true that said Bank promised to repay said sums on demand or otherwise; and the Court further erred in Finding No. XI that it is also true that said Bank is in no way obligated, in the matter of said receivership or otherwise, to repay said sums or any part thereof to said persons or to any persons or person whomsoever; that

said Finding is not in accordance with the evidence both oral and documentary and is not in accordance with the law.

VIII

That the Court erred in Finding No. XII that it is also true on various occasions and at various times between July 1930 and November 1931 said Comptroller of the Currency, through his duly authorized deputy comptrollers, notified and instructed said Bank, and the officers and directors thereof, that payments made to repair the impaired capital of said Bank must be considered as voluntary and unconditional contributions, without obligation of repayment, that each and all of said persons who made said payments hereinabove referred to acquiesced by lapse of time and otherwise in said notification and instruction of said Comptroller of the Currency; that said payments were payments made to repair the impaired capital of said Bank and were, each and all, voluntary and unconditional contributions, without any obligation whatsoever on the part of said Bank to repay same; that the law requires all payments such as those made by plaintiffs under the circumstances shown by the evidence herein to be voluntary and unconditional and without any obligation whatsoever on the part of the bank to repay same, as to the plaintiffs, MINNIE PALMER, formerly known as MINNIE BAXTER, JENNIE POMEROY, M. DEL GIORGIO and F. A. YUNGBLUTH, and as to those plaintiffs is contrary to the undisputed evidence; that to each and all of the plaintiffs, except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects

and relates to them, said Finding has no application in law by reason of the fact that the said correspondence therein referred to all took place after the said contract had been consummated, and said Finding is not in accordance with the law.

IX

That the Court erred in Finding No. XIII that it is true that no evidence has been presented to this court proving any appreciation in the value of the bonds in said bond account, the depreciation in which bond account is alleged by plaintiffs to have been purchased by plaintiffs or, in the case of plaintiffs M. E. DAY, her predecessor in interest F. K. DAY; and that no evidence has been presented to this court of any legal damage or loss suffered or sustained by plaintiffs or any of them, which is not in accordance with the law or the facts of the case and is contrary to the evidence both oral and documentary.

X

That the Court erred in Paragraph I of his Conclusions of Law in finding that there did not exist any contract between said Bank and the persons who made the payments to said Bank hereinabove set forth whereunder and whereby said Bank was obligated to repay said sums or any part thereof; that said payments were voluntary and unconditional contributions to said Bank, and were such because of the requirement of the law in that respect and because of the acquiescence by said persons for a long period of time in the notification and instruction given by the Comptroller of the Currency that such con-

tributions must when made be considered as voluntary and unconditional contributions without obligation on the part of the Bank to repay same; that said finding is not in accordance with the law or the facts of the case and is against the evidence both oral and documentary.

XI

That the Court erred in Paragraph II of Conclusions of Law in finding that none of the plaintiffs herein is entitled to recover any sum so paid to said Bank or any promissory note given to said Bank to cover his contribution, as hereinabove set forth, either under causes of action numbers I to XIV, inclusive, or under causes of action numbers XV to XXVIII, inclusive, of plaintiffs' complaint on file herein; that said Finding is contrary to the evidence and not in accordance with the law.

XII

That the Court erred in Paragraph III of his Conclusions of Law in finding that defendant Anaheim First National Bank, a national banking association, is entitled to judgment herein, together with its costs of suit; that said finding is not in accordance with the law.

Dated this 25th day of July, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for plaintiffs and
appellants.

[Endorsed]: Filed Jul. 25 1938 R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

ORDER ALLOWING APPEAL

The plaintiffs above-named except Frank Baum and Josephine Baum, husband and wife, said Frank Baum and Josephine Baum having withdrawn as parties plaintiff and said action having, by order made and entered herein June 5, 1937, been dismissed so far as the same affects and relates to them, and appellants herein, having filed a Petition for an Order Allowing their Appeal from that certain Minute Order in these proceedings made on the 10th day of January, 1938, wherein and whereby Judgment was rendered in favor of the defendants and against the plaintiffs herein and that certain Minute Order made in these proceedings on the 13th day of May, 1938, wherein and whereby plaintiffs' Motion for New Trial of this matter was denied, which said Petition was accompanied by an Assignment of Errors;

NOW THEREFORE on Motion of counsel for said plaintiffs, it is hereby

ORDERED that said Petition for Order Allowing an Appeal be and the same is hereby granted and said appeal to the United States Circuit Court of Appeals for the Ninth Circuit allowed, and it is further

ORDERED that plaintiffs' cost bond upon Appeal be, and the same is hereby fixed in the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00), and it is further

ORDERED that a certified copy of the Transcript of the record and proceedings herein pertinent to this appeal be forthwith transmitted to the Clerk of the United States Circuit Court of Appeals for the ninth Circuit at San Francisco.

Dated: July 25, 1938.

Wm. P. James
United States District Judge

[Endorsed]: Filed Jul 25, 1938 R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, lately at the District Court of the United States for the Southern District of California, Central Division, in a suit depending in said Court between L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY, plaintiffs and THE ANAHEIM FIRST NATIONAL BANK, a National Banking Association, et al., defendants, No. 7522-J (In Law) of said Court, a judgment was rendered against L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER, and M. E. DAY, and

WHEREAS, the said L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER, and M. E. DAY, plaintiffs have obtained from the United

States District Court an order for an appeal to reverse the judgment in the aforesaid suit and a citation directed to said ANAHEIM FIRST NATIONAL BANK, a National Banking Association, JOHN DOE COMPANY, a corporation, JOHN DOE ONE, JOHN DOE TWO, AND JOHN DOE THREE, J. V. HOGAN, Receiver, Intervenor, defendants, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California within thirty days from the date of said citation, to-wit, July 26, 1938:

NOW THEREFORE, there is deposited with you as Clerk of said United States District Court as aforesaid, the sum of Two Hundred Fifty Dollars (\$250.00) cash bond on appeal, that the said L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY shall prosecute its appeal to effect and answer all costs if it fail to make their appeal good; otherwise the said sum to be returned to EDW. C. PURPUS, their attorney, if said L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY, filing their appeal herein, upon the filing of the Mandate of the Circuit Court of

Appeals in favor of said L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUSH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY on their appeal or that no costs be recovered against it.

F. H. DOLAN, Appellant,
By EDW. C. PURPUS
Edw. C. Purpus
His Attorney

APPROVED:

July 26, 1938.

Wm P. James

United States District Judge

[Endorsed]: Filed Jul. 26, 1938. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(at law)

ACKNOWLEDGMENT OF SERVICE

The undersigned, as attorneys for defendants and appellee Anaheim First National Bank hereby admit service on them of the following documents in the above-captioned case:

Assignment of Errors

Petition for Appeal

Citation

Order Allowing Appeal

Dated this 4th day of August, 1938.

DOCKWEILER & DOCKWEILER AND
BENJAMIN CHIPKIN

By Henry I. Dockweiler

Attorneys for Appellee

Anaheim First National Bank

[Endorsed]: Filed Aug 4 1938 R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

STIPULATION

WHEREAS, the record shows that an Appeal has been filed on behalf of ERNEST F. GANAHL, and it appearing further that said ERNEST F. GANAHL now refuses to go forward with said Appeal and refuses to file necessary bond, IT IS STIPULATED by counsel that a severance may be granted as to ERNEST F. GANAHL, and his Appeal may be dismissed as to him only and that L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY are to appear only as appellants, and shall go forward with said Appeal. That in all other respects the Order Allowing Appeal of the District Court of the United States and the Appeal shall be continued in full force and effect.

DOCKWEILER & DOCKWEILER and
BENJAMIN CHIPKIN,

By Henry I. Dockweiler

Attorneys for Appellees

WM. J. M. HEINZ

By Wm. J. M. Heinz

Attorney for appellant, Ernest F. Ganahl.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for appellants

[Endorsed]: Filed Aug. 13, 1938 R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

ORDER GRANTING SEVERANCE OF
ERNEST F. GANAHL TO APPEAL

IT IS SO ORDERED and the severance is hereby granted, the Appeal is dismissed as to ERNEST F. GANAHL and continued for hearing and for decision as to the plaintiffs and appellants, L. J. KELLY, F. H. DOLAN, BEN BAXTER, S. JAMES TUFFREE, ED KELLY, F. A. YUNGBLUTH, MINNIE PALMER, formerly known as MINNIE BAXTER, M. DEL GIORGIO, JENNIE POMEROY, J. W. TRUXAW, J. J. DWYER and M. E. DAY.

Dated: This 13 day of August, 1938.

Wm. P. James
United States District Judge

[Endorsed]: Filed Aug. 13, 1938. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J

(In Law)

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the parties to the above-entitled action, that the transcript on appeal heretofore taken by plaintiffs from decree herein need not repeat the title of the cause in any other paper included in the transcript than the Bill of Complaint, and that there may be likewise omitted from the transcript all endorsements on the backs or covers of such papers, provided that the endorsement as to filing date in each instance appear and be printed. This stipulation is entered into to save expense and encumbrance of the record, and shall be made a part of the record herein.

Dated: August 12, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for Appellants.

DOCKWEILER & DOCKWEILER and
BENJAMINE CHIPKIN

By Henry I. Dockweiler

Attorneys for Appellee.

[Endorsed]: Filed Aug 13, 1938 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

O R D E R

Upon application of the plaintiffs and appellants herein, it is hereby ORDERED that the plaintiffs and appellants in the above-entitled action may and shall proceed under the rules of Civil Procedure applicable to the District Courts, Ninth Circuit Court of Appeals and to the Supreme Court of the United States in force prior to September 16th, 1938, under and by authority of Rule 86 of Civil Procedure applicable to the Ninth Circuit Court of Appeals and to the Supreme Court of the United States, by reason of the fact that the new rules of Civil Procedure would not be feasible to work justice in this action.

Wm. P. James
United States District Judge

Dated October 21, 1938

[Endorsed]: Filed Oct 22 1938 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NO. 7522-J
(In Law)

PRAECIPE FOR TRANSCRIPT OF RECORD

TO THE CLERK OF THE ABOVE-ENTITLED
COURT:

Please issue a certified transcript of record in the above-entitled case, consisting of the following:

1. Complaint.
2. Petition for Removal from Superior Court of Orange County.
3. Notice to Plaintiff of Removal from Orange County Superior Court.
4. Bond for Removal.
5. Order for Removal.
6. Notice of Motion of Plaintiffs to Remand.
7. Motion of Plaintiffs to Remand.
8. Order Denying Motion of Plaintiffs' to Remand.
9. Notice of Denial of Motion to Remand.
10. Answer of Defendant, Anaheim First National Bank.
11. Dismissal as to Frank Baum and Josephine Baum, husband and wife, as parties plaintiff.
12. Stipulation signed by plaintiffs' counsel Waiving Jury.
13. Order for Findings and Entry of Findings and Judgment.
14. Findings and Judgment.
15. Objections of Plaintiffs to Findings.
16. Order of March 2, 1938 Overruling Objections of Findings and Denying Plaintiffs Exceptions to Findings.

17. Notice of Hearing Motion and Motion of Plaintiffs for New Trial.
18. Order Denying Motion of Plaintiffs for New Trial.
19. Petition of Plaintiffs (Except Frank Baum and Josephine Baum) for Appeal and Order Thereon.
20. Order Allowing Appeal.
21. Assignment of Errors.
22. Citation signed by Judge James.
23. Cash Bond on Appeal.
24. Acknowledgment of Service of Appeal Papers.
25. Stipulation re Severance of Ernest F. Ganahl to Appeal.
26. Order Granting Severance of Ernest F. Ganahl to Appeal.
27. Stipulation re Omitting Title of Cause.
28. Praecipe.
29. Engrossed Bill of Exceptions.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for plaintiffs except
Frank Baum, Josephine Baum
and Ernest F. Ganahl.

Receipt of a copy of the above Praecipe for Transcript of Record is hereby acknowledged.

Dated: October 17th, 1938.

DOCKWEILER & DOCKWEILER and
Benjamin CHIPKIN

By Henry I. Dockweiler

Attorneys for defendant.

[Endorsed]: Filed Oct. 17, 1938. R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 7522-J

P R A E C I P E

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Please prepare and print sixty (60) copies of the Transcript of Record on Appeal in the above-entitled action in place and stead of forty (40) copies of the Transcript of Record on Appeal in the above-entitled action as requested on the 17th day of October, 1938.

EDW. C. PURPUS

By Edw. C. Purpus

Attorney for Plaintiffs and
Appellants.

[Endorsed]: Filed Oct 20 1938 R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 165 pages, numbered from 1 to 165 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; petition for removal; notice of petition for removal; bond on removal; order for removal; notice of motion to remand; motion to remand; order of May 12, 1936; notice of denial of motion to remand; answer; order re withdrawal of Mark Baum and Josephine Baum as parties plaintiff; waiver of jury trial; order of January 12, 1938; order of March 2, 1938; findings of fact and conclusions of law; judgment; bill of exceptions; petition for appeal; assignment of errors; order allowing appeal; bond on appeal; stipulation re severance of Ernest F. Ganahl to appeal; order granting severance of Ernest F. Ganahl to appeal; stipulation re omitting "Title of Court and Cause"; order of October 21, 1938, and prae-cipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellants herein and a receipted bill is herewith enclosed, also that

the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of October, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-third.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

